(17,281.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 696

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. THOMAS M. JETT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Petition for writ of error	1	1
Assignment of errors	8	5
Order allowing writ of error	10	6
Writ of error	12	7
Bond on appeal	13	7
Citation and service	15	8
Clerk's certificate and return	16	9
Caption	17	10
Transcript from circuit court of Montgomery county	18	10
Caption	18	10
Order docketing cause, &c.	19	10
Petition	20	11
Summons	24	13
Sheriff's return	25	13
Demurrer	26	14
Order overruling demurrer	28	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1899.

	Original	Print.
Answer	29	15
Demurrer to answer	33	18
Order for continuance	36	19
Order sustaining demurrer to answer	38	20
Order granting leave to amend answer	39	20
Order adjourning court	40	21
Amended answer	43	21
Order adjourning court	49	25
Demurrer to amended answer	51	25
Order filing demurrer to amended answer	54	27
Judgment	55	27
Bill of exceptions	58	28
Appeal bond	60	29
Order adjourning court	62	30
Clerk's certificate	63	30
Assignment of errors	64	31
Order taking motion to set cause under advisement	67	33
Order setting cause for oral argument	67	33
Order submitting cause	67	33
Opinion	69	33
Judgment	76	39

1 STATE OF ILLINOIS:

In the Supreme Court of the Central Grand Division, to the October Term, A. D. 1898.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS at the Relation of Thomas M. Jett, State's Attorney of Montgomery County, Illinois, Appellee.
} Petition for Writ of Error.

To the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois:

And now comes The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation, appellant in the above-entitled cause, and respectfully represents unto your honor that on the 3rd day of December, A. D. 1894, the People of the State of Illinois at the relation of Thomas M. Jett, State's attorney of Montgomery county, Illinois, filed in the circuit court of Montgomery county, Illinois, a petition for a writ of mandamus to compel certain through interstate-commerce trains of the defendant to stop at the city of Hillsboro, the county-seat of Montgomery county, Illinois, and the said appellant railway company, the petitioner herein, also shows to this court that it was duly served with summons in the said suit, as appears by the transcript of the record of the said circuit court of Montgomery county, on file in this court, and that it appeared and demurred to the said petition; that the said demurrer was overruled, and thereupon it filed its answer to the said petition for writ of mandamus, and the said petitioner in said mandamus suit demurred to said answer, and said answer was adjudged upon demurrer to be bad, and thereupon this petitioner asked and obtained leave to file an amended answer in said suit, and at the April term, A. D. 1895, this petitioner filed its amended
2 answer in the said circuit court of Montgomery county, setting forth, among other things in said answer, that the said train so sought to be stopped at Hillsboro by the petition for writ of mandamus was a special train, devoted specially to carrying interstate transportation between the city of St. Louis, in the State of Missouri, to the city of New York, in the State of New York, both of which cities are without the limits of the State of Illinois, and that prior to the putting on of such train there was an urgent demand on the part of the travelling public—that is, passengers desiring to go from the city of St. Louis, in the State of Missouri, to the city of New York, in the State of New York, and other interstate eastern points—for a through special fast train, leaving St. Louis at noon and arriving at New York about six o'clock p. m. the day following its departure from St. Louis, and that this travel so desiring such train between the said cities had grown to such an extent that in order to satisfy and accommodate its requirements it

became necessary for this petitioner, the defendant in said suit, to put on this through fast train, called the "Knickerbocker special," which leaves St. Louis daily at noon and connects with other through fast trains on the Lake Shore & Michigan Southern R. R. and the New York Central & Hudson River R. R. and arrives in New York about 6 o'clock p. m. the day following its departure from St. Louis, thus making a fast through route from St. Louis to New York; and defendant avers that it was necessary to put on this train because the trains heretofore on said road and which still continue to run and stop at Hillsboro and other way stations could not and cannot, by reason of such stops, make the time required by the through travel in order to make the eastern connections, and could not carry passengers from the city of St. Louis to the city of New York aforesaid within the time which the demands of business and said passengers and the demands of interstate commerce and travel required and still do require.

3 The said petitioner in its answer also averred that this was not a regular passenger train for carrying passengers from one point to another point in the State of Illinois, but that such traffic is already and amply provided for by other trains passing over its road, and that this train, the Knickerbocker special, is run and used exclusively for interstate traffic from points wholly without to points wholly without the State of Illinois, and is engaged exclusively in interstate commerce, and is not subject to regulation by the statutes of the State of Illinois providing that all trains shall stop a sufficient length of time at railway stations of county-seats to receive and let off passengers with safety, and that to subject this train engaged exclusively in such interstate commerce to the statutory regulations of the various States through which it passes, requiring it to stop at county-seats or other way stations, would wholly destroy the usefulness of this train, would damage the passengers whose business necessities demanded its being put on, would prevent them from making connections with other trains, and would impede and obstruct interstate commerce, and that if the said train is required to stop at county-seats in the State of Illinois and other States through which said through train passes and must run that this petitioner, defendant below, will be compelled to abandon said train, and that it could not be run as a fast through train solely for interstate transportation, which was and is the sole purpose and object of said train, and that such travelling public which has and does demand that said train shall leave St. Louis at noon and arrive in New York at six o'clock p. m. the following day will be greatly damaged and deprived of said train and of its connections, and that the stoppage of said train will cause great and serious detriment and damage to this defendant and the several persons who have or would pay their fares for through transit from St. Louis to

4 New York aforesaid, and from St. Louis to Indianapolis, Cleveland, and Buffalo, and other cities east of Buffalo.

And this petitioner also averred in its answer that no tickets were sold for and no passengers received on said Knickerbocker train, which is devoted exclusively to interstate commerce from points in

Illinois to points in Illinois, and that said Knickerbocker special makes no stops in the State of Illinois for passengers, and makes no stops except at railroad crossings where there is no interlocking device, unless for water, fuel, or necessary orders, and that if it is required to make any other stops and required to stop at Hillsboro and other county-seats it cannot make the connections it now makes and the time it now makes and which said public travel demands, and it will have to be abandoned to the great damage and irreparable damage and injury to this defendant and to all the through traveling public desiring to go from St. Louis to New York, as aforesaid.

And said petitioner at said time also averred that the said city of Hillsboro had, prior to the running of this Knickerbocker special train, all the trains necessary or that could be demanded to accommodate its business passing through said Hillsboro at convenient hours in the morning and evening and going in both directions.

And in its answer said petitioner further averred and showed "that the said supposed law and statute of the State of Illinois upon which this proceeding is based is null and void so far as it pertains to the regulation or stopping of this Knickerbocker special train, because the regulation of interstate commerce is exclusively within the power of Congress under the Constitution of the United States and no State law can be passed to regulate or control such trains engaged in interstate commerce and compel them to stop at county-seats or way stations."

5 Your petitioner has clearly presented to this court a Federal question in this, that the said statute of the State of Illinois, under which this suit for mandamus was brought, was in violation of the Constitution of the United States; was an interference with interstate commerce and interstate transportation, as fully appears by said answer filed in this cause.

And thereupon, at said term of said court, the People at the relation of said Jett, State's attorney, filed a demurrer to the said amended answer, as appears by the record herein; and thereupon, at said term of said court, the said demurrer to said amended answer was argued, and the said circuit court of Montgomery county sustained at the November term, 1895, the said demurrer to the said amended answer, and the said defendant, said railway company, excepted to the said ruling of the said circuit court of Montgomery county in so sustaining the demurrer to its said amended answer, and refused to answer further, but stood by its said amended answer.

And thereupon the said circuit court of Montgomery county awarded the peremptory writ of mandamus, as prayed for in and by the said People of the State of Illinois in said suit, compelling this petitioner to stop its said fast through train known as the Knickerbocker special at the depot of this petitioner, in the city of Hillsboro, in said Montgomery county and State of Illinois; from which judgment of said circuit court of said Montgomery county, Illinois, this petitioner appealed to the supreme court of the State of Illinois, and its appeal was submitted to said court at the June term, A. D. 1896,

of said court, and that on the 24th day of October, A. D. 1898, there was filed in said cause an opinion in the said court affirming the judgment of the said circuit court of Montgomery county, Illinois, in awarding the said peremptory writ of mandamus against this petitioner.

And your petitioner further represents that in and by its appeal a Federal question was necessarily presented for the decision
6 of the said supreme court of Illinois, and that question was, as above set forth, whether the statute of the State of Illinois requiring that all passenger trains shall stop a sufficient length of time at railway stations or county-seats to receive and let off passengers with safety was in violation of the Constitution of the United States and was an interference with interstate commerce and interstate transportation, and that the decision of this question was necessary for the decision of this case, and that said Federal question was decided by the decision of the said supreme court of the State of Illinois, it holding that said statute was not in violation of the Constitution of the United States and was not an interference with interstate commerce or interstate transportation, but was a mere police regulation within the statute.

And your petitioner further shows unto your honor that said judgment of said circuit court of Montgomery county, Illinois, in this case could not have been affirmed by the said supreme court of the State of Illinois without the said supreme court deciding this Federal question presented herein as aforesaid.

All of which appears in said record and proceedings in said cause, whereby manifest error happened, to the great damage and loss of your petitioner.

And your petitioner, the appellant herein, respectfully petitions this honorable court that on account of said Federal question here presented and which was decided by said supreme court and which must necessarily decide and control this case that you award to it a writ of error, commanding the clerk of this court, under his seal, to distinctly and openly send the record and proceedings in this cause and with all things concerning the same unto the honorable the Supreme Court of the United States, so that the alleged error as aforesaid may be inspected and that any and all error
7 therein may be corrected by the said Supreme Court of the United States.

Your petitioner further represents that it files with this petition to this court an assignment of errors in this cause, and your petitioner further prays that you make an order allowing your petitioner to give a bond in said cause in such sum as this court may fix and deem right, and that the giving of such bond shall act as a supersedeas herein.

THE CLEVELAND, CINCINNATI, CHICAGO
& ST. LOUIS RAILWAY COMPANY,
By JOHN T. DYE &
GEO. F. McNULTY, *Its Attorneys.*

Indorsed on back: The Cleveland, Cincinnati, Chicago & St. Louis R'y Co. *vs.* The People *ex rel.* Jett. Petition for writ of error. Filed Nov. 1, 1898. A. D. Cadwallader, clerk supreme court.

8 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY Company, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS at the Relation of Thomas M. Jett, State's Attorney of Montgomery County, Illinois, Defendant in Error.

Writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois.

Now comes the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error, by John T. Dye and George F. McNulty, its attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The said supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Montgomery county, Illinois.

2nd. The said supreme court of the State of Illinois erred in holding that the statute of the State of Illinois requiring all regular passenger trains to stop a sufficient length of time at railway stations of county-seats to receive and let off passengers with safety was not in violation of the Constitution of the United States.

3rd. The said supreme court of the State of Illinois erred in holding that said statute was in force as applied to the special through interstate commerce train of the said plaintiff in error known as the Knickerbocker special.

9 4th. The said supreme court of the State of Illinois erred in holding that the said statute of said State of Illinois requiring all regular passenger trains to stop a sufficient length of time at railway stations of county-seats to receive and let off passengers with safety, as applied to through interstate special trains devoted solely and exclusively to interstate commerce and running from the city of St. Louis, in the State of Missouri, to the city of New York, in the State of New York, was not in violation of the Constitution of the United States.

5th. The said supreme court of the State of Illinois erred in holding that such train was a train that could be regulated as to the manner and number of its stops by the State of Illinois, or any statute thereof.

And the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company prays that the said judgment of the said circuit court of Montgomery county, awarding the peremptory writ of mandamus herein, and the judgment of the supreme court of the State of Illinois, affirming the judgment of the said circuit court of Montgomery

county, Illinois, may — reversed, annulled, and held for naught, and that it may be restored to all things which it has lost by occasion of said judgment.

JOHN T. DYE,
GEO. F. McNULTY,
Attorneys for Plaintiff in Error.

Indorsed on back: Filed Nov. 1, 1898. A. D. Cadwallader, clerk supreme court.

10 STATE OF ILLINOIS:

In the Supreme Court for the Central Grand Division, to the October Term, A. D. 1898.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY Company, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS at the Relation of Thomas M. Jett, State's Attorney of Montgomery County, Illinois, Appellee.

Now, on this day, comes the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and files its petition herein, in which it was stated that on the 24th day of October, A. D. 1898, the supreme court of the State of Illinois entered a judgment against it in a certain cause wherein it was appellant and The People at the relation of Thomas M. Jett, State's attorney of Montgomery county, were appellees, and it being represented in said petition that in the opinion filed in said cause in the supreme court of said State of Illinois there was drawn in question the validity and constitutionality of a statute, it being alleged in said petition that such statute was in violation of the Constitution of the United States.

And it appearing that it was held in said opinion adverse to the claim as made in said petition, and it therefore appearing that a Federal question is involved in this proceeding, it is therefore ordered that a writ of error be allowed, as prayed for, from this court to the Supreme Court of the United States, and that the same shall act as a supersedeas herein, upon the petitioner filing herein a proper bond in the sum of one thousand dollars ($1,000.00), with James E. Parrish or Geo. F. McNulty as surety, to be approved by the clerk of the supreme court of Illinois.

JOSEPH N. CARTER,
Chief Justice of Supreme Court, Illinois.

11 Indorsed on back: The Cleveland, Cincinnati, Chicago & St. Louis R'y Co. *vs.* The People *ex rel.* Order allowing writ of error. Filed Nov. 1, 1898. A. D. Cadwallader, clerk supreme court.

12 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, between The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, appellant, and The People of the State of Illinois on the relation of Thomas M. Jett, State's attorney of Montgomery county, Illinois, appellees, a manifest error hath happened, to the great damage of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 3rd day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

13 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY Company, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of Thomas M. Jett, State's Attorney of Montgomery County, Defendant in Error.

Know all men by these presents that we, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, as principal, and Melville E. Ingals and James E. Parish, of Edgar county, Illinois, as sureties, are held and firmly bound unto the People of the State of Illinois in the penal sum of one thousand dollars ($1,000.00), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and

administrators, jointly, severally, and firmly by these presents upon the conditions following:

Whereas the Cleveland, Cincinnati, Chicago & St. Louis Railway Company has sued out and obtained a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois for the central grand division thereof for the reviewal and reversal of a judgment of said supreme court of the State of Illinois, rendered on the 24th day of October, A. D. 1898, at Springfield, Illinois, in a certain cause there pending on appeal from the circuit court of Montgomery county, State of Illinois, wherein the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company was appellant and The People of the State of Illinois upon the relation of Thomas M. Jett, State's attorney of Montgomery county, appellee:

14 Now, if the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company shall prosecute its said writ of error with effect and without delay and shall pay and answer all such costs and damages as shall be awarded against it on the hearing and trial on the said writ of error if it fails to make its plea therein good, then this obligation to be void; else of full force and effect.

In witness whereof the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company has caused this obligation to be executed by its president and secretary and its corporate seal hereto affixed, and the surety has hereto set his hand and seal this 31st day of October, A. D. 1898.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY CO.,

By M. E. INGALLS, *Pres.* [SEAL.]

M. E. INGALS. [SEAL.]

JAMES E. PARRISH. [SEAL.]

Attest: E. F. OSBORN, *Sec'y.* [SEAL.]

Approved Nov. 11th, A. D. 1898, by order of court.

A. D. CADWALLADER,
Clerk Supreme Court.

Indorsements: C., C., C. & St. L. R'y Co. *vs.* The People *ex rel.* Bond. Filed Nov. 11, 1898. A. D. Cadwallader, clerk supreme court.

15 UNITED STATES:

Supreme Court of the State of Illinois.

To the People of the State of Illinois *ex rel.* Thomas M. Jett, State's attorney of Montgomery county, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Cleveland, Cincinnati, Chicago & St. Louis Railway Company

is plaintiff in error and The People of the State of Illinois *ex rel.* Thomas M. Jett, State's attorney of Montgomery county, Illinois, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois, this 9th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

JOSEPH N. CARTER,
Chief Justice of the Supreme Court of the State of Illinois.

STATE OF ILLINOIS, } ss:
Sangamon County, }

I, Edward C. Akin, attorney general of the State of Illinois, hereby waive service of the within citation and enter the appearance of the People of the State of Illinois and my appearance as attorney general of said State in the Supreme Court of the United States in the within-entitled cause this Nov. 11, 1898.

EDWARD C. AKIN,
Attorney General.

16 STATE OF ILLINOIS:

Supreme Court.

I, A. D. Cadwallader, clerk of the supreme court of the State of Illinois, duly elected and qualified, in and for what was formerly known as the central grand division, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 17 to 76, inclusive, contain a full, true, and correct copy of all the proceedings had and of record in said cause in the supreme court of the State of Illinois; that I attach hereto the original citation, with acknowledgement of service thereon; that a copy of this writ of error is now on file in my office, in the city of Springfield, county of Sangamon and State of Illinois, the same having been filed by the plaintiff in error for the defendants in error on the 3rd day of November, A. D. 1898, and so indorsed.

In witness whereof I have hereunto set my hand and affixed the seal of the said supreme court of the State of Illinois, at Springfield, this 11th day of November, A. D. 1898.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 11, 1898, A. D. C.]

17 STATE OF ILLINOIS, } ss.:
Supreme Court, }

In the Supreme Court, June Term, A. D. 1896.

Proceedings had before the honorable the supreme court of the State of Illinois begun and held at Springfield, to wit, on the first Tuesday in the month (being the second day) of June, A. D. 1896.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; Jesse J. Phillips, justice; Jacob W. Wilkin, justice; David J. Baker, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Maurice T. Maloney, attorney general; E. A. Baxter, sheriff; E. A. Snively, clerk.

Be it remembered that heretofore, to wit, on the 27th day of May, A. D. 1896, there was filed in the office of the clerk of said supreme court a record, which is in the words and figures following, to wit:

18 UNITED STATES OF AMERICA, } ss.:
State of Illinois, Montgomery County, }

In Circuit Court, November Term, A. D. 1894.

Pleas before the Hon. Robert B. Shirley, one of the three judges of the fifth judicial circuit of the State of Illinois and presiding judge of the circuit court of Montgomery county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Hillsboro, in said county, on the fifth day (being the first Monday) of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the said United States the one hundred and nineteenth.

Present: Hon. Robert B. Shirley, one of the three judges of the fifth judicial circuit of the State of Illinois; Thomas M. Jett, State's attorney; Emery Wright, clerk; Henry Michael, sheriff.

Attest: EMERY WRIGHT, *Clerk.*

19 Be it remembered that on, to wit, the third day of December, A. D. 1894, the same being one of the days of the regular November term, A. D. 1894, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Thomas M. Jett, State's Attorney of Montgomery County, Illinois,
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS Railway Company.
} 101. Petition for Mandamus.

Now, on this day, comes the said petitioner, Thomas M. Jett, State's attorney aforesaid, and also comes James M. Truitt, of counsel for

petitioner, and upon said petitioner's motion it is ordered by the court that said petitioner have and hereby has leave to docket this cause and to file his petition herein; whereupon said cause is docketed and said petition filed accordingly.

It is ordered by the court that the clerk of this court issue a writ of summons herein in accordance with the statute in such case made and provided, said writ to be returnable December tenth, A. D. 1894, at 10 o'clock a. m.

20 Be it remembered that on, to wit, the third day of December, A. D. 1894, there was filed in the office of the clerk of the said circuit court aforesaid a certain petition for a writ of mandamus; which said petition for a writ of mandamus is in the words and figures following, to wit:

STATE OF ILLINOIS, }
County of Montgomery, } ss:

In the Circuit Court, to the November Term, A. D. 1894.

To the hon. circuit court of Montgomery county, in the fifth judicial circuit of the State of Illinois:

The petitioner, Thomas M. Jett, State's attorney in and for said county, who sues for the People of the State of Illinois in this behalf, comes into court here and in the name and by the authority of the People of the State of Illinois gives said court to understand and be informed that the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, an incorporated company, for several years last past has been operating and is now operating a certain railroad which is located and extends from the city of St. Louis, Missouri, across the said county of Montgomery and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, in the State of Indiana.

The petitioner further gives said court to understand and be informed that said railroad has been located and operated across said county and through the corporate limits of said city for a long space of time, to wit, forty years, and during all that time the company operating said railroad has kept and maintained a railroad station or depot within the corporate limits of said city, where its passenger trains have been accustomed to stop to take passengers on and to discharge them from its trains.

21 The petitioner further gives said court to understand and be informed that said city of Hillsboro, through which said railroad runs, as aforesaid, is now and for many years last past, to wit, seventy years, has been the county-seat of said county of Montgomery, and that by the statute of the State is such case made and provided it is made the duty of the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company to stop all regular passenger trains by it run over and upon said railroad at said railroad station on said railroad, situated within the corporate limits of said city, as aforesaid, a sufficient length of time to receive

and let off passengers with safety; yet, notwithstanding its said duty in this behalf, the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company has for several weeks last past knowingly, wilfully, and continuously run and is now running a regular passenger train or trains designated by said company the "Knickerbocker special" twice each day by and through said railroad station situated within said city, as aforesaid, and through the corporate limits of said city at a great rate of speed, to wit, at the rate of fifteen miles per hour, without stopping said trains or either of them at said railway station so that passengers can get on and off said trains, contrary to the provisions of the statute aforesaid and against the peace and dignity of the people of the State of Illinois.

The petitioner further gives the court to understand and be informed that said railway company runs said "Knickerbocker special" regular passenger train by and through said railway station without stopping and at the great rate of speed aforesaid from east to west at about the hour of 4 o'clock a. m. of each and every day, and runs said "Knickerbocker special" regular passenger train by and through said railroad station without stopping and at the great rate of speed aforesaid from west to east about the hour of two o'clock p. m. of each and every day.

22 The petitioner further gives said court to be informed and understand that said railway company is now running its said regular passenger trains as aforesaid, and he has every reason to believe and does believe, and so states the fact to be, that said railway company will continue to so run its trains and so continue to disregard its said duty unless it shall be compelled to stop said trains at said railroad station within the corporate limits of said city by the mandate of this court.

Wherefore the petitioner prays a writ of mandamus directed to the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, commanding it forthwith to stop its said regular passenger trains by it designated the "Knickerbocker special," as aforesaid, at said railroad station of said railway company located within the corporate limits of the city of Hillsboro, a sufficient length of time to receive and let off passengers with safety, as by the statute in such case made and provided said railway company is commanded to do, and that such further and other orders may be made and entered in the premises as justice may require.

THOMAS M. JETT,
State's Attorney.

JAMES M. TRUITT, *Of Counsel.*

23 STATE OF ILLINOIS, } ss:
County of Montgomery, }

Thomas M. Jett, State's attorney for said county, the petitioner above named, being by me first duly sworn, on his oath says that the several matters and things in the foregoing petition stated are

true in substance and in matter of fact to the best of his knowledge, information, and belief.

THOMAS M. JETT.

Subscribed and sworn to before me this 3rd day of December, A. D. 1894.

EMERY WRIGHT, *Clerk.*

24 Be it also further remembered that on, to wit, the third day of December, A. D. 1894, there was issued out of the office of the clerk of said circuit court aforesaid a certain writ of summons; which said writ, together with the endorsements and return of the officer thereon, is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Montgomery County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, if it shall be found in your county, personally to be and to appear before the circuit court of said county, at the court-house, in Hillsboro, in said county, on the tenth day of December, 1894, at 10 o'clock a. m., to answer unto the People of the State of Illinois, and show cause why a writ of mandamus should not be issued against it out of said court.

And have you then and there this writ, with an endorsement thereon showing in what manner you have executed the same.

Witness Emery Wright, clerk of the circuit court of said county, and the seal thereof, at his office, in Hillsboro, this third day of December, A. D. 1894.

[SEAL.] EMERY WRIGHT, *Clerk.*

On the back of said writ are the following endorsements:

25 "Filed December 4th, 1894. Emery Wright, circuit clerk."

"I have duly served the within by reading the same to the within named (served, see return on back) as I am herein commanded.

H. N. RANDLE, *Sheriff.*"

"*Fees.*

Service	.65
Miles travel	.10
Return	.10
	$ .85"

"STATE OF ILLINOIS, } ss:
Montgomery County, }

I have duly served the within-named Cleveland, Cincinnati, Chicago and St. Louis Railway Company by reading the same and at the same time delivering a true copy thereof to James A. Brown,

agent for the aforesaid Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

The president and none of the other officials of said company not to be found in my county.

This 3rd day of December, A. D. 1894.

H. N. RANDLE, *Sheriff.*"

26 Be it remembered that on, to wit, the 10th day of December, A. D. 1894, there was filed in the office of the clerk of said circuit court aforesaid a certain demurrer; which said demurrer is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Montgomery, }

In the Circuit Court, November Term, A. D. 1894.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Thomas M. Jett, State's Attorney,
vs.
THE CLEVELAND, CINCINNATI, CHICAGO and St. Louis Railway Company. } Petition for Mandamus.

Now comes the said defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, by Amos Miller and George F. McNulty, its attorneys, and demurs to the said petition and says that the same is not sufficient in law, and for cause of demurrer says that the said petition does not state affirmatively that the defendant's railroad has been located and operated across said county and through the corporate limits of the city of Hillsboro for a long space of time or any space of time, but merely states it is an understanding or mere information. The petitioner does not state as a fact, but upon mere information or understanding, that the said defendant railroad company has a line of railway through the county seat of Montgomery county, and does not state as a fact, but upon mere information, that this defendant company is now running a regular passenger train or has run said train through the limits of the city of Hillsboro without stopping at said place, and the said petitioner does not state to the court
27 as a fact that the said railway company run said Knickerbocker special passenger train by and through said city twice a day without stopping in said city, and the said petitioner does not state to the court as a fact that said company will continue to run its trains or any of them through the said city of Hillsboro without stopping thereat, and the petition is in other respects uncertain and informal, and from it the right to this writ of mandamus prayed for does not appear clear, certain, and undisputed, and this defendant says this must appear before said writ can be granted, and said affidavit or verification to said petition is not sufficient because it states that the truth of the matters in the petition *are* stated upon the information and belief of the relator.

And, further, said petition does not state that a demand was made upon the defendant to stop the said passenger train, designated the "Knickerbocker special," at the station in the corporate limits of the city of Hillsboro.

Therefore it prays that the said petition be held bad and insufficient, and the said petition and writ thereunder be quashed.

By GEORGE F. McNULTY AND
AMOS MILLER,
Attorneys for Def't.

28 Be it remembered that on, to wit, the tenth day of December, A. D. 1894, the same being one of the days of the regular November term, A. D. 1894, of the said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Thomas M. Jett, State's Attorney of Montgomery County, Illinois,
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND St. Louis Railway Company.
} 101. Petition for Mandamus.

Now, on this day, comes said People, by Thomas M. Jett, State's attorney and petitioner as aforesaid, and also by James M. Truitt, Esq., of counsel, and now comes the said defendant, by Amos Miller and George F. McNulty, its attorneys. Now said defendant interposes a demurrer to the petition in this cause, and the court, after a full hearing of said demurrer, being now fully advised herein, orders that said demurrer be, and the same is hereby, overruled; to which ruling so made by the court the said defendant enters herein its exceptions. It is ordered by the court that said defendant be, and it is hereby, required to plead herein by 12 o'clock noon on Wednesday, December 12th, A. D. 1894.

29 Be it remembered that on, to wit, the 12th day of December, A. D. 1894, there was filed in the office of the clerk of said circuit court aforesaid a certain answer; which said answer is in the words and figures following, to wit:

STATE OF ILLINOIS, } *ss:*
Montgomery County, }

In the Circuit Court, to the November Term, A. D. 1894.

THE PEOPLE *ex Rel.* THOMAS M. JETT
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILway Company.

Answering the petition filed herein by Thomas M. Jett, State's attorney in and for said county, who sues for the People of the State of Illinois—

The defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, admits that it is an incorporated company, and avers that it was incorporated under the laws of the States of Ohio and Indiana, and admits that for several years last past it has been and now is operating a railroad extending from the city of St. Louis across said county of Montgomery and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, and through the State of Indiana and State of Ohio to Cleveland, in the last-named State, where it connects with the Lake Shore and Michigan Southern railroad, extending from the city of Cleveland to the city of Buffalo, there connecting with the New York Central and Hudson railroad, extending from the
30 city of Buffalo to the city of New York, in the State of New York.

Respondent further admits that said railroad has been operated through the corporate limits of the said city of Hillsboro for a long time, and it has kept and maintained a railroad station or depot within the corporate limits of the said city of Hillsboro. It further avers that during all the time such railroad has been operated by this respondent it has furnished and now furnishes a sufficient number of regular passenger trains to accommodate all the local and through business along the line of its road, and especially all the local and through passenger business arising at or destined to the city of Hillsboro; that its regular passenger trains engaged in carrying the local and through business have all stopped and now stop at the station in the city of Hillsboro. It further shows that no passenger trains have been taken off, and that the same regular passenger trains which have been run over said road prior to the putting on of the Knickerbocker special referred to in the petition filed against the defendant still run over said road and still stop at Hillsboro. Respondent further shows that such regular passenger trains which have been running for a long time over said road have been and are now ample and sufficient to accommodate the public and do all the business along its line in the State of Illinois, and to furnish convenient and ready facilities for travel to the people of Hillsboro to and from the various points over said railway and to points beyond the lines of said railway without delay to the connections of said trains and to all persons desiring to travel to and from Hillsboro.

Your respondent further shows that the Knickerbocker special referred to in the petition filed against it is a train especially devoted to carrying interstate transportation between the city of St. Louis and the city of New York, both of which cities are without the limits of the State of Illinois; that the travel between the cities has grown to such an extent that in order to satisfy and accommodate its requirements it became necessary to put on this through
31 fast train called the Knickerbocker special, which connects with other through fast trains on the Lake Shore road and the New York Central road, thus making a fast through line from St. Louis to New York. It was necessary to put on this train because trains heretofore on said road and which still continue to run

and stop at Hillsboro and other way stations could not, by reason of such stops, make the time required to make the eastern connections, and could not carry passengers from the city of St. Louis to the city of New York within the time which the demands of business and interstate commerce require.

Your respondent further shows that said train is not a regular passenger train for carrying passengers from one point to another point in the State of Illinois, but that such traffic is already amply and sufficiently provided for by the trains passing over its road; and this special Knickerbocker train is run and used exclusively for interstate traffic from points wholly without the State of Illinois to points wholly without the State of Illinois, and is engaged exclusively in interstate commerce and is not subject to regulation by the statute of Illinois providing that all trains should stop at county-seats; that to subject this train, engaged exclusively in interstate commerce, to statutory regulations of the various States through which it passes, requiring it to stop at county-seats or way stations, would wholly destroy the usefulness of the train and would impede and obstruct interstate commerce. Your respondent further shows that if said train is required to stop at the county-seats in the State of Illinois and other States through which said through line runs that your respondent would be compelled to abandon said train; that it could not be then run as a fast through train solely for interstate transportation, which is the sole purpose and object of said train.

32 Your petitioner further shows that no tickets are sold for and no passengers are received on said special Knickerbocker train devoted exclusively to interstate commerce from points in Illinois to points within Illinois.

Your respondent admits that Hillsboro is the county-seat of Montgomery county, and shows that it has a population of about 2,500 people, and that there are four regular passenger trains each way every day passing through said city which stop at the station in said city, and that said regular passenger trains amply accom-o-date the travel to and from Hillsboro fully, and afford every reasonable facility to travel to and from said city at reasonable hours.

Your respondent further shows that the regulation of interstate commerce is exclusively within the power of Congress under the Constitution of the United States, and that no State law can be passed to regulate or control trains engaged exclusively in interstate commerce and compel them to stop at county-seats or way stations.

This respondent further shows that said Knickerbocker special engaged exclusively in interstate commerce makes no stops in the State of Illinois, except at crossings, for fuel, water, or for orders, and if it is required to make any further stops it cannot make the connection it now makes or the time which it now makes, and will have to be abandoned.

Wherefore the defendant prays that said petition may be dis-

missed, and that this defendant may have judgment for its costs and for all proper relief.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
By AMOS MILLER AND
GEO. F. McNULTY, *Its Att'ys.*

33 Be it remembered further that on, to wit, the thirteenth day of December, A. D. 1894, there was filed in the office of the clerk of said circuit court aforesaid a certain demurrer to answer; which said demurrer is in the words and figures following, to wit:

STATE OF ILLINOIS, } *ss:*
Montgomery County, }

In the Circuit Court, to the November Term, A. D. 1894.

THE PEOPLE *ex Rel.* THOMAS M. JETT
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY Company.

And the petitioner, as to the answer of the defendant in the above-entitled cause, says that the said answer and the matters therein contained in manner and form as the same are pleaded in said answer are not sufficient in law to bar the petitioner from having his aforesaid writ of mandamus as prayed for in his petition in this case, and that your petitioner is not bound by law to answer the same, and this he is ready to verify. Wherefore, for want of sufficient answer in this behalf, your petitioner prays judgment, and that the defendant may be barred from maintaining its aforesaid answer.

And the *defendant* shows to the court here the following other special causes of demurrer to said answer and demurs to that part of said answer more particularly in which the respondent shows that such regular passenger trains have been running for a long time over said road and have been and are now ample and sufficient to accommodate the public and do all the business
34 and furnish them sufficient and ready facilities for travel to the people of Hillsboro to and from the various points over said railway, in this, that that part of said answer is merely an argument and is no answer to the petition of your petitioner.

2nd. Your petitioner demurs to that part of said answer in which the respondent says that the Knickerbocker special referred to in the petition filed against it is a train especially devoted to carrying interstate transportation between the city of St. Louis and the city of New York, both of which cities are without the limits of the State of Illinois; that the travel between the cities alone is of such an extent that in order to satisfy and accommodate its requirements it became necessary to put on this through fast train called the Knickerbocker special, which connects with other through fast trains on other

roads, etc., and that it was necessary to put on this train because other trains heretofore on said road, and which still continue to run and stop at Hillsboro and other way stations, could not by reason of such stops make the time required to make the eastern connections, in this, that said part of said answer is merely a conclusion reached by the defendant company.

3rd. Your petitioner further demurs to that part of respondent's answer in which it said that said train is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, but that such traffic is already sufficiently and amply provided for by trains passing over its road, in this, that this is a mere conclusion reached by the respondent.

4th. Also that said answer of the respondent is argumentative in this, that the facts which the respondent undertakes to set up in its answer by way of its defense are not set forth and averred in an affirmative manner, but are argumentative and mere conclusions.

5th. The said answer is in other respects uncertain in form and insufficient.

J. M. TRUITT AND
THOMAS M. JETT,
Att'ys for Petitioner.

Be it remembered that on, to wit, the thirteenth day of December, A. D. 1894, the same being one of the days of the regular November term, A. D. 1894, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* Thomas M. Jett, State's Attorney of Montgomery County, State of Illinois,
vs.
CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY.
} 101. Petition for Mandamus.

Now, on this day comes the said petitioner, Thomas M. Jett, State's attorney, as aforesaid, and also comes James M. Truitt, counsel for said petitioner, and now comes said defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, by its attorneys, John T. Dye, George F. McNulty, and Amos Miller. It appearing to the court that said defendant has filed herein its answer on, to wit, the 12th day of December, A. D. 1894, at 11.55 o'clock a. m., and now said petitioner interposes a demurrer herein to said answer, it is ordered by the court, upon the consent and agreement of the parties hereto, that this cause be, and the same is hereby, continued until the next succeeding term of this court. It is ordered by the court that court be, and the same is hereby, adjourned until court in due course of law.

37 UNITED STATES OF AMERICA, } ss:
State of Illinois, Montgomery County, }

In the Circuit Court, January Term, A. D. 1895.

Pleas before the Hon. Jacob Fouke, one of the judges of the fifth judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Montgomery county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Hillsboro, in the said county, on the twenty-first day (being the third Monday) of January, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Present: Hon. Jacob Fouke, judge of the fifth judicial circuit of the State of Illinois; Emery Wright, clerk; Thomas M. Jett, State's attorney; Henry N. Randle, sheriff.
Attest: EMERY WRIGHT, *Clerk.*

38 Be it also remembered that on, to wit, the thirteenth day of January, A. D. 1895, the same being one of the days of the regular January term, A. D. 1895, of the said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY. } 38. Petition for Mandamus.

Now, on this day, comes the said People, by Thomas M. Jett, State's attorney, and also by James M. Truitt, of counsel, and now also comes said defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, by Messrs. George F. McNulty and Amos Miller, its attorneys, and now said plaintiff interposes a demurrer to said defendant's answer filed herein; and the court having heard the argument of counsel for the respective parties hereto thereon, and being now fully advised in the premises, on consideration thereof, doth find that said answer is not sufficient in law to be replied to. It is therefore ordered by the court that said demurrer be, and the same is hereby, sustained.

39 Be it also remembered that on, to wit, the fifth day of February, A. D. 1895, the same being one of the days of the regular January term, A. D. 1895, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY. } 38. Mandamus.

Now, on this day, come the respective parties, plaintiff and defendant hereto, by their attorneys, and now, upon motion of said

defendant, it is ordered by the court that it have leave hereby to amend its answer filed herein, said amendment to be made and filed by the first day of April, A. D. 1895, and it is further ordered by the court that this cause be, and the same is hereby, continued until the next succeeding term of this court.

40 Be it also remembered further that on, to wit, the thirteenth day of February, A. D. 1895, the same being one of the days of the regular January term, A. D. 1895, of said circuit court aforesaid, the following, among other, proceedings where had and entered of record in the words and figures following, to wit:

It is ordered by the court that this court be, and the same is hereby, adjourned until court in due course of law.

41 UNITED STATES OF AMERICA, } ss:
State of Illinois, Montgomery County, }

In the Circuit Court, April Term, A. D. 1895.

Pleas before the Honorable James A. Creighton, one of the judges of the fifth judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Montgomery county, in the State aforesaid, and at a term thereof begun and held at the courthouse, in the city of Hillsboro, in said county, on the fifteenth day (being the third Monday) of April, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Present: Hon. James A. Creighton, judge of the fifth judicial circuit of the State of Illinois; Emery Wright, clerk; Thomas M. Jett, State's attorney; Henry N. Randle, sheriff.

Attest: EMERY WRIGHT, *Clerk.*

42 Be it remembered that on, to wit, the fourth day of April, A. D. 1895, there was filed in the office of the clerk of said circuit court aforesaid a certain amended answer of respondent; which said amended answer of respondent is in the words and figures following, to wit:

43 STATE OF ILLINOIS, } ss:
Montgomery County, }

In the Circuit Court, April Term, A. D. 1895.

THE PEOPLE *ex Rel.* THOMAS M. JETT
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY. } Petition for Mandamus.

Answering the petition filed herein by Thomas M. Jett, State's attorney in and for said county, who sues for the People of the State of Illinois, the defendant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, admits that it is an incorporated com

pany, and avers that it was incorporated under the laws of the States of Ohio and Indiana, and admits that for several years last past it has been and now is operating a railroad extending from the city of St. Louis across said Montgomery county and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, Indiana, and through the State of Indiana and the State of Ohio to Cleveland, in the last-named State, where it connects with the Lake Shore and Michigan Southern railroad, extending from the city of Cleveland to the city of Buffalo, New York, and there connecting with the New York Central and Hudson River railroad, extending from the city of Buffalo, in the State of New York, to the city of New York, in said State.

Respondent further admits that said railway has been operating and now operates through the corporate limits of the city of Hillsboro; that it has kept and maintained a railroad station or depot within the corporate limits of said city of Hillsboro for a long time.

It further avers that during all the time such railroad has been
44 operated by this respondent it has furnished and now furnishes a sufficient number of regular passenger trains to accommodate al- the local and through business along the line of its road, and especially all the local and through passenger business arriving at or destined for the city of Hillsboro; that its regular passenger trains engaged in carrying the local and through business have all stopped and do now stop at the station of the company in the city of Hillsboro. It further shows that no passenger trains have been taken off; that the same regular passenger trains which have run over said road prior to the putting on of the Knickerbocker special referred to in the petition filed against the defendant still run over said road and still stop at Hillsboro a sufficient length of time to enable all passengers to get on or off said trains with safety.

Respondent further shows that such regular passenger trains have been running for a long time over said road, and have been and now are ample and sufficient to accommodate the public and all the business along its line in the State of Illinois, and to furnish convenient and ready facilities for travel to the said people of Hillsboro and from the various points over said railway and to points beyond the lines of said railway, without delay, by the connections of said trains, and affording ample facilities for travel to all persons desiring to travel to and from Hillsboro.

Your respondent further shows that the Knickerbocker special referred to in the petition filed against it is a special train especially devoted to carrying interstate transportation between the city of St. Louis, in the State of Missouri, to the city of New York, in the State of New York, both of which cities are without the limits of the State of Illinois; that prior to the putting on of such trains there
was an urgent demand on the part of the through travelling
45 public—that is, people desiring to go from said city of St. Louis to said city of New York and other interstate eastern points—for a through special fast train leaving St. Louis at noon and arriving in New York about six o'clock p. m. the day following

its departure from St. Louis, and that this travel so desiring said train between the said cities has grown to such an extent that in order to satisfy and accommodate its requirements it became necessary for this defendant to put on this through fast train, called the Knickerbocker special, which leaves St. Louis daily at noon and connects with other through fast trains on the said Lake Shore and Michigan Southern R. R. and New York Central and Hudson River R. R. and arrives at New York about six o'clock p. m. the day following its departure from St. Louis, thus making a fast through line from St. Louis to New York; and defendant avers that it was necessary to put on this train because the trains heretofore on said road and which still continue to run and stop at Hillsboro and other way stations could not and cannot, by reason of such stops, make the time required by the through travel in order to make the said eastern connections, and could not carry passengers from the city of St. Louis aforesaid to the said city of New York aforesaid within the time which the said demands of business and said passengers and interstate commerce required and does still require.

Your respondent further shows that said train is not a regular passenger train for carrying passengers from one point to another point in the State of Illinois, but that such traffic is already amply and sufficiently provided for by the other trains passing over its road, and this Knickerbocker special train is run and used exclusively for interstate traffic from points wholly without the State of Illinois to points wholly without the State of Illinois, and is engaged exclusively in interstate commerce, and is not subject to regulation by the statute of the State of Illinois providing
46 that all trains shall stop at county-seats; that to subject this train, engaged exclusively in interstate commerce, to statutory regulations of the various States through which it passes, requiring it to stop at county-seats or way stations, would wholly destroy the usefulness of this train, would damage the passengers whose business necessities demand its being put on, would prevent them from making connections with other trains, and would impede and obstruct interstate commerce.

Your respondent further shows that if said train is required to stop at the county-seats in the State of Illinois and other States through which said through train passes and must run that your respondent will be compelled to abandon said train; that it could not then be run as a fast through train solely for interstate transportation, which was and is the sole purpose and object of said train, and that said traveling public, which has and does demand that said train shall leave St. Louis at noon and arrive in New York at about six o'clock p. m. the following day, will be greatly damaged and deprived of said train and of its connections, and the stoppage of said train will cause great and serious detriment and damage to this defendant and the several persons who had or would pay their fares for through transit from said city of St. Louis to said city of New York and from said city of St. Louis to said cities of Indianapolis, Cleveland, and Buffalo, and other cities east of Buffalo.

Your respondent further shows that no tickets are sold for and no

passengers received on said special Knickerbocker train, which is devoted exclusively to interstate commerce, from points in Illinois to points in Illinois, and that said Knickerbocker special train makes no stops in the State of Illinois for passengers—makes no stops in the said State of Illinois, except at railroad crossings, where there is no interlocking device, for fuel, water, or for necessary orders, and if it is required to make any other stops, and required to stop at
47 Hillsboro and other county-seats, it cannot make the connections it now makes, not the time which it now makes and which said public travel demands, and that it will have to be abandoned, to the great damage and irreparable damage and injury to this defendant and to all the through traveling public desiring to go from St. Louis, Missouri, to the city of New York.

Your respondent admits that the city of Hillsboro is the county-seat of Montgomery county, and shows that it has a population of only twenty-five hundred people, and that there are now and have been for some time and were at the time of the commencement of this suit four regular passenger trains each way every day passing through said city, which stopped at the station in said city a sufficient length of time to allow passengers to get on and off said trains, and that in addition to said regular passenger trains there are various local freight trains upon which passengers can ride to and from said city of Hillsboro, and that said regular passenger trains, together with said local freight trains, amply accommodate the travel to and from Hillsboro and afford every reasonable facility to travel to and from said city at reasonable hours, two of said passenger trains passing through said city going west to St. Louis in the morning at reasonable hours, and two of said regular passenger trains going west to St. Louis passing through said city in the afternoon at reasonable hours, and two of said passenger trains going east from said city of St. Louis to Indianapolis and eastern points pass through said city at reasonable and timely hours in the morning, and two of said trains going east pass through Hillsboro at reasonable hours in the evening, and said local freight trains are run to accommodate the traveling public going to and from said city of Hillsboro.

Your respondent avers and further shows that the said supposed law and statute of the State of Illinois upon which this proceeding is based is null and void so far as it pertains to the regulation or stopping of this Knickerbocker special train, because the
48 regulation of interstate commerce is exclusively within the power of Congress under the Constitution of the United States, and no State law can be passed to regulate or control trains engaged in interstate commerce and compel them to stop at county-seats or way stations.

Wherefore the defendant prays that said petition may be dismissed, and that this defendant, having fully answered, may have judgment for its costs and all proper relief.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
By GEO. F. McNULTY,
JOHN T. DYE, AND
AMOS MILLER, *Its Attorneys.*

49 Be it also remembered further that on, to wit, the tenth day of May, A. D. 1895, the same being one of the days of the regular April term, A. D. 1895, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

It is further ordered by the court that this court be, and the same is hereby, adjourned until court in due course of law.

50 UNITED STATES OF AMERICA, }
State of Illinois, Montgomery County, } *ss:*

In the Circuit Court, in the November Term, A. D. 1895.

Pleas before the Honorable Robert B. Shirley, one of the three judges of the fifth judicial circuit of the State of Illinois and presiding judge of the circuit court of Montgomery county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Hillsboro, in said county, on the fourth day (being the first Monday) of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and twentieth.

Present: Hon. Robert B. Shirley, one of the three judges of the fifth judicial circuit of the State of Illinois; Thomas M. Jett, State's attorney; Emery Wright, clerk; Henry Randle, sheriff.

Attest: EMERY WRIGHT, *Clerk.*

51 Be it remembered that on, to wit, the twenty-sixth day of November, A. D. 1895, there was filed in the office of the clerk of said circuit court aforesaid a certain demurrer to amended answer; which said demurrer is in the words and figures following, to wit:

STATE OF ILLINOIS, }
Montgomery County, } *ss:*

In the Circuit Court, to the November Term, A. D. 1895.

THE PEOPLE *ex Rel.* THOMAS M. JETT
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILway Company.

And the petitioner as to the answer of the defendant in the above-entitled cause says that said answer and the matters therein contained in manner and form as the same are pleaded in said answer are not sufficient in law to bar the petitioner from having his aforesaid writ of mandamus as prayed for in his petition in this case, and that your petitioner is not bound by law to answer the same, and this he is ready to verify. Wherefore, for want of sufficient answer in this behalf, your petitioner prays judgment and that the defendant may be barred from maintaining its aforesaid answer.

And the defendant shows to the court here the following other special causes of demurrer to the said answer, and demurs to that part of said answer more particularly in which the respondent shows that such regular passenger trains have been running for a long time over said road, and have been and are now ample
52 and sufficient to accommodate the public and do all the business and furnish them sufficient and ready facilities for travel to the people of Hillsboro to and from the various points over said railway, in this, that that part of said answer is merely an argument and is no answer to the petition of your petitioner.

2nd. Your petitioner demurs to that part of said answer in which the respondent says that the Knickerbocker special referred to in the petition filed against it is a train especially devoted to carrying interstate transportation between the city of St. Louis and the city of New York, both of which cities are without the limits of the State of Illinois; that the travel between the cities alone is of such an extent that in order to satisfy and accommodate its requirements it became necessary to put on this through fast train called the Knickerbocker special, which connects with other through fast trains on other roads, etc., and that it was necessary to put on this train because other trains heretofore on said road and which still continue to run and stop at Hillsboro and other way stations could not, by reason of such stops, make the time required to make the eastern connections, in this, that said part of said answer is merely a conclusion reached by the defendant company.

3rd. Your petitioner further demurs to that part of respondent's answer in which it is said that said train is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, but that such traffic is already sufficiently and amply provided for by trains passing over its road, in this, that this is a mere conclusion reached by the respondent.

53 4th. Also that said answer of the respondent is argumentative in this, that the facts which the respondent undertakes to set up in its answer by way of its defence are not set forth and averred in an affirmative manner, but are argumentative and mere conclusions.

5th. The said answer is in other respects uncertain in form and insufficient.

J. M. TRUITT &
THOMAS M. JETT,
Att'ys for Petitioner.

54 #10. Mandamus case.

Order of Court.

NOVEMBER 26, 1895.

Be it remembered further that on, to wit, the twenty-sixth day of November, A. D. 1895, the same being one of the days of the regular November term, A. D. 1895, of said circuit court aforesaid, the following, among *the*, proceedings were had and entered of record in the words and figures following, to wit:

THE PEOPLE *ex Rel.* THOMAS M. JETT, State's Attorney,
vs.
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. Louis Railway Company.
} No. 10. Petition for Mandamus.

Now, on this day, come the said parties to this cause, both petitioner and defendant, by their attorneys, and now said petitioner interposes a demurrer herein to the amended answer filed in this cause by said defendant.

55 Be it also remembered further that on, to wit, the twenty-seventh day of November, A. D. 1895, the same being one of the days of the regular November term, A. D. 1895, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

STATE OF ILLINOIS,
Montgomery County, } *ss:*

In the Circuit Court of Montgomery County, November Term, A. D. 1895.

THE PEOPLE *ex Rel.* THOMAS M. JETT, State's Attorney,
vs.
THE CLEVELAND, CINCINNATI, CHICAGO and St. Louis Railway Company.
} Petition for Mandamus.

And on this day come again the said parties to this cause, both petitioner and defendant, and the petitioner having filed herein his demurrer to the amended answer of the defendant, and the court, having heard arguments of counsel for petitioner and defendant upon said demurrer, doth find, hold, and adjudge that said demurrer to said amended answer should be, and the same is hereby, sustained, and said amended answer is hereby held to present no sufficient defense in law to the petition of the petitioner and the proceedings herein by petitioner; to which ruling of the court in sustaining said demurrer to said amended answer and holding said answer insufficient the defendant, at the time, by its counsel, excepted; and thereupon the court required said defendant to further answer said petition, which said defendant declined to do, but stood by its said amended answer as presenting a full answer and defense to
56 the said petition herein filed; and thereupon said cause came to a hearing before said court upon the petition for mandamus filed herein by petitioner, and the court having diligently examined and inspected the record herein and being fully advised in the premises, it is considered and adjudged by the court that the prayer of the petitioner filed herein be, and the same is hereby, granted, and a peremptory writ of mandamus is hereby awarded against the defendant.

It is further ordered and adjudged by the court that the said

Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the defendant, be, and hereby is, commanded to forthwith stop its regular passenger train designated by it "the Knickerbocker special," being the train leaving St. Louis, Missouri, about noon each day and going east through Hillsboro about the hour of two o'clock p. m., at the railway station and depot of the defendant, located within the corporate limits of the said city of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety, as the law requires.

And it is further ordered and adjudged that the sheriff of Montgomery county, Illinois, serve upon said defendant the mandate of this court, and make return showing in what manner he has executed the same.

And it is further ordered and adjudged by the court that said petitioner have and receive from and of said respondent the costs by him in this behalf expended; to all of which ruling and judgment so made and rendered by the court, as aforesaid, the said defendant enters herein its exceptions, and prays an appeal to the supreme court of this State, which prayer is by the court
57 granted, and an appeal allowed said defendant, upon condition, however, that said defendant file herein its appeal bond in the sum of one thousand dollars, with good and sufficient security thereon, to be approved by the clerk of this court; also that it file herein its bill of exceptions, said bond and said bill of exceptions to be filed within sixty days of this date.

58 Be it remembered that on, to wit, the eighteenth day of December, A. D. 1895, there was filed in the office of the clerk of said circuit court aforesaid a certain bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Montgomery County, }

In the Circuit Court of Montgomery County, to November Term, A. D. 1895.

THE PEOPLE *ex Rel.* THOMAS M. JETT, State's Attorney, *vs.* THE CLEVELAND, CINCINNATI, CHICAGO and St. Louis Railway Company. } Petition for Mandamus.

Be it remembered that on the hearing of this case at this term the following proceedings were had in said cause. That on the 27th day of November, A. D. 1895, being one of the days of said court, all the parties to said cause, both petitioner and defendant, came and appeared, and the petitioner having filed herein his demurrer to the amended answer of the defendant, and the court, having heard arguments of counsel for petitioner and defendant, the respondent on said demurrer, did find, hold, and adjudge that said demurrer to said amended answer should be, and the same was,

sustained by the court, and said amended answer was held to present no sufficient defence in law to the petition for mandamus; to which ruling of the court in sustaining said demurrer to said amended answer and holding said answer insufficient the defendant, said respondent, at the time then and there duly excepted, and thereupon the court required said defendant to further answer said petition, which the defendant declined to do, and excepted to
59 the ruling of said court requiring it to further answer, and said defendant then and there stood by its said amended answer as presenting a full answer to said petition herein filed.

And thereupon said cause came to a hearing before said court upon the petition for said mandamus, and the court, as appears by the order thereof, granted the prayer of said petition and awarded a peremptory writ of mandamus as prayed for in said petition against the defendant; to which action and decision of the court in granting the prayer of said petition as prayed for in said petition and in granting a peremptory writ of mandamus against the defendant the said defendant, by its counsel, then and there duly excepted.

And it was further adjudged by the court that the petitioner have and recover from and of said defendant, the respondent, the costs by said petitioner in said suit expended; to which ruling of the court in so adjudging said costs the defendant, by its counsel, then and there excepted.

Forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this its bill of exceptions, and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made, which is done accordingly this 18th day of December, A. D. 1895.

ROBERT B. SHIRLEY, [SEAL.]
Judge of the said Circuit Court of Montgomery County.

60 Be it remembered further that on, to wit, the twenty-fourth day of December, A. D. 1895, there was filed in the office of the clerk of said circuit court aforesaid a certain appeal bond to the supreme court of this State; which said appeal bond is endorsed as being approved by the said clerk on said date, and said appeal bond being in the words and figures following, to wit:

Know all men by these presents that we, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation, and Geo. F. McNulty and Amos Miller, of the county of Montgomery and State of Illinois, are held and firmly bound unto the People of the State of Illinois in the penal sum of one thousand (1,000) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly by these presents.

Witness our hands and seals this 23rd day of December, A. D. 1895.

The condition of the above obligation is such that whereas the said People of the State of Illinois on the relation of Thomas M.

Jett, State's attorney of Montgomery county, Illinois, did, on the 27th day of November, A. D. 1895, in the circuit court of Montgomery county, in the State aforesaid, and of the November term thereof, A. D. 1895, obtain an order for writ of mandamus against the above-bounden Cleveland, Cincinnati, Chicago & St. Louis Railway Company, commanding it forthwith to stop its regular passenger train designated by it the "Knickerbocker special" at the railway station and depot of the defendant located within the corporate limits of the city of Hillsboro, in Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety; that the said People in said suit did also recover the costs of said suit, from which order and judgment of the said circuit court of Montgomery county aforesaid the said
61 Cleveland, Cincinnati, Chicago & St. Louis Railway Company has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company shall duly prosecute its said appeal with effect and shall abide by and perform all things required of it in said order for mandamus, and, moreover, pay the amount of all costs rendered and to be rendered against it in case said judgment shall be affirmed in said Supreme Court, then the above obligation is void; otherwise to remain in full force and virtue.

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,

[SEAL.] By E. F. OSBORN, *Sec'y.* [SEAL.]
GEO. F. McNULTY. [SEAL.]
AMOS MILLER. [SEAL.]

Taken, approved, and entered into before me, at my office, in Hillsboro, this 24th day of December, A. D. 1895.

EMERY WRIGHT,
Clerk of the said Circuit Court of Montgomery County.

62 Be it remembered that on, to wit, the fourth day of January, 1896, the same being one of the days of the regular November term, 1895, of said circuit court aforesaid, the following, among other, proceedings were had and entered of record in the words and figures following, to wit:

It is ordered by the court that this court be, and the same is hereby, adjourned until court in due course of law.

63 STATE OF ILLINOIS, } *ss:*
Montgomery County, }

I, Emery Wright, clerk of the circuit court of Montgomery county, in the State aforesaid, and keeper of the records and files of said court, do hereby certify the above and foregoing to be a true, perfect, and complete copy of petition for mandamus, writ of summons and return thereon, demurrer to petition, answer to petition, demurrer to answer, amended answer, demurrer to amended answer, bill of exceptions, appeal bond to supreme court, and all other or-

ders of court in a certain cause lately pending in said court on the common-law side thereof, wherein The People *ex rel.* Thomas M. Jett, State's attorney, were plaintiffs and The Cleveland, Cincinnati, Chicago & St Louis Railway Company was defendant, as the same appears from the records and files of said court now in my office remaining.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Hillsboro, Illinois, this fourth day of January, A. D. 1896.

[SEAL.] EMERY WRIGHT, *Clerk.*

64 In the Supreme Court of the State of Illinois, Central Grand Division, June Term, A. D. 1896.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
THE STATE OF ILLINOIS, Appellee.

Assignment of Errors.

Comes now the appellant, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and shows to the court that there is manifest error in this record in the following particulars, to wit:

1. The court below erred in holding and finding that the respondent, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, could be compelled by the legislature of Illinois to stop at county-seats in the State of Illinois trains engaged exclusively in interstate commerce, and in carrying through passengers from St. Louis, Missouri, to points east of the State of Illinois, and carr-ing no passengers between points within the State of Illinois, and in ordering the defendant to stop at Hillsboro, Illinois, its "Knickerbocker special" trains, engaged exclusively in interstate commerce, and in carrying through passengers from St. Louis, Missouri, or points within the State of Illinois, to points east of the State of Illinois, and which carry no passengers between points within the State of Illinois, when other trains ample and sufficient to accommodate the business of Hillsboro and between points in Illinois and from points in Illinois to points without Illinois were provided by defendant, thereby holding, finding, and decreeing that it
65 was within the power of the State of Illinois to lay burdens and restraints upon interstate commerce and to regulate interstate commerce in matters not affecting the safety, convenience, or welfare of the citizens of Illinois, in contravention of the Constitution of the United States.

2. The court erred in holding and finding that the legislature of Illinois, in the exercise of its police power, could lay burdens and restraints upon interstate commerce in particulars which do not affect the security, comfort, convenience, or welfare of the citizens of Illinois by compelling trains engaged exclusively in interstate commerce to stop at county-seats in said State, when other trains

ample and sufficient to accommodate all the travel between said county-seats and other points within and without the State of Illinois were provided by said defendant, in contravention of the Constitution of the United States.

3. The court erred in sustaining a demurrer to the amended answer of the defendant.

4. The court erred in rendering a judgment and awarding a peremptory writ of mandamus requiring the defendant to stop its regular through passenger train designated by it as the "Knickerbocker special," being the train leaving St. Louis about noon each day and going through the town of Hillsboro about two o'clock p. m., at the railway station and depot of the defendant, located within the corporate limits of the town of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety, said train being engaged exclusively in interstate commerce and carrying no passengers between points in the State of Illinois or from points without the State of Illinois to points in the State of Illinois, or from points in the State of Illinois to points without the State of Illinois,
66 thereby imposing restraints and burdens upon interstate commerce and assuming to regulate interstate commerce, contrary to the Constitution of the United States.

5. The court erred in rendering the judgment upon pleadings in favor of petitioner and against the respondent.

6. The circuit court erred in not overruling the demurrer to the amended answer of respondent.

7. The circuit court erred in awarding the writ of mandamus as prayed for in the petition of relator.

8. The circuit court erred in awarding judgment against the respondent for the costs of this suit.

9. The circuit court erred in holding the statute of the State of Illinois requiring all regular passenger trains to stop at county-seats was valid, as the same, so far as it affects trains devoted solely to interstate commerce, is void and unconstitutional.

10. The court erred in not carrying back the demurrer of petitioners to amended answer to the petition itself, and erred in not holding such petition insufficient.

By reason whereof the appellant prays that the said judgment may be reversed, etc.

JOHN T. DYE &
GEO. F. McNULTY,
Attorneys for The Cleveland, Cincinnati, Chicago & St. Louis R'y Co., Appellant.

67 And afterwards, to wit, on the 2nd day of June, A. D. 1896, the following proceedings were had in said cause in said court:

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
THE PEOPLE *ex Rel.*, etc.

On this day comes the appellant herein, by attorney, and moves the court to set said cause for oral argument; and the court, not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, to wit, on the 3rd day of June, A. D. 1896, the following proceedings were had in said cause in said court:

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
THE PEOPLE *ex Rel.*, etc.

On this day come again the parties herein, and, the court being now sufficiently advised in the premises, it is ordered that this cause be set for oral argument on Tuesday next.

And afterwards, to wit, on the 9th day of June, A. D. 1896, the following proceedings were had in said cause in said court:

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
THE PEOPLE *ex Rel.*, etc.

On this day come the said parties, by their attorneys, and, this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming now on to be heard, the appellant having entered motion to reverse the judgment and remand said cause and for costs, and the appellees having entered motion to affirm the judgment herein and
68 for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 24th day of October, A. D. 1898, the court filed an opinion in this cause, which is in the words and figures following, to wit:

69 Central Div.—June, '96.

C., C., C. & ST. L. R'Y CO.
v.
THE PEOPLE *ex Rel.*

Mr. Justice PHILLIPS delivered the opinion of the court:

The relator filed a petition alleging the appellant was an incorporated railway company operating a certain railroad from the city of

St. Louis, Missouri, across the county of Montgomery and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, in the State of Indiana. It was further alleged the city of Hillsboro was, and for many years had been, the county-seat of said county of Montgomery, and that the appellant kept and maintained a railroad station and depot within the corporate limits of said city, where its passenger trains were accustomed to stop and take on and discharge passengers from its trains; that by the statutes of the State of Illinois it was the duty of the appellant to stop all regular passenger trains by it run over and upon said railroad within the corporate limits of said city at said railroad station a sufficient length of time to receive and discharge passengers, but, disregarding its duty, appellant unlawfully and knowingly runs a regular passenger train, designated as the "Knickerbocker special," twice each day through the corporate limits of said city without stopping at the station to receive and discharge passengers, contrary to the provisions of the statute. The petition prayed for a writ of *mandamus* to compel the appellant to stop said train at the railroad station at the said county-seat a sufficient length of time to receive and discharge passengers, as by the statute provided.

The answer averred that before and at the time of filing the petition appellant furnished ample and sufficient accommodation for all local and through business, and ready and convenient transportation to and from Hillsboro to all points and connections without delay; that the same number of trains ran and stopped as before the "Knickerbocker special" was put on; that the latter was and is a train in urgent demand, specially devoted to interstate transportation between St. Louis and New York, because other trains which stop at Hillsboro and other county-seats cannot make the time required by the demands of passengers and interstate commerce; that said train is not a regular passenger train carrying passengers from one point to another in Illinois, but is a special train engaged exclusively in interstate travel from points wholly without to points wholly without the State of Illinois; that no tickets are sold or passengers received on this train from points in Illinois to points in Illinois, and that it makes no stops except such as are necessary for fuel, water, and at railway crossings; that to stop at county-seats would destroy the usefulness of the train and interfere with and obstruct interstate commerce; that sufficient trains convenient and suitable to the traveling public pass through and stop at Hillsboro to fully supply the demand; that the State of Illinois had no power to pass any act that would require such a train, devoted solely to interstate commerce, to stop at county-seats in Illinois, and that such an act is in violation of the Constitution of the United States.

To this answer a demurrer was interposed and sustained. The defendant stood by its answer, whereupon the court entered judgment and awarded the peremptory writ of *mandamus*, and this appeal is prosecuted.

Section 25 of the railroad act, as amended July 1, 1879, is as follows: "Every railroad corporation shall cause its passenger trains

to stop, upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, all regular passenger trains shall stop a sufficient length of time at the railroad station of county-seats to receive and let off passengers with safety." (Hurd's Stat. 1889, p. 1060.) It is important first to determine the question as to the power of the legislature to pass this act, and whether applicable to trains running through the State of Illinois and carrying passengers.

In *Chicago and Alton Railroad Co. v. People*, 105 Ill., 657, we said (p. 661): "In the enactment of the law requiring all regular passenger trains to stop at county-seats, the legislature, no doubt, had in view the great benefit the public would derive in the increased facilities for reaching the county-seat, to aid in the dispatch of business in courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors,—indeed, the prompt and efficient transaction of
71 all business in the courts held at the county-seat, and the facility for the examination of the records on the sale and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, and in its enactment we are fully satisefid that the legislature transcended none of its powers, nor did it violate any chartered right of the railroad company."

In granting a charter to a private corporation the State does not part with its power to enact proper police regulations. Corporations accept their charters upon the implied condition that they are to exercise their rights subject to this power of the State. The legislature has the power, by the enactment of general laws from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety, health and welfare. (*Galena and Chicago Union Railroad Co. v. Loomis*, 13 Ill., 548; *Ohio and Mississippi Railroad Co. v. McClellan*, 25 *id.*, 123; *Illinois Central Railroad Co. v. People*, 143 *id.*, 434.) This corporation operating a railroad across the State of Illinois is, for all purposes of local government, a domestic corporation, subject to the police control of the legislature of this State.

In *Chicago and Alton Railroad Co. v. People*, *supra*, it was said (p. 659): "The train in question was equipped and operated in the same manner as any other passenger train on the road. It carried passengers and baggage as did other trains. It ran upon the official time-table of the company as other trains did. Indeed, the only difference between this and the other passenger trains on the road was, that the other two stopped at all the stations while this did not. On account of this difference, can the train, within the meaning of the statute, be regarded other than a regular passenger train? We think not. The language of the act would not, perhaps, include a wild train, a freight train, an excursion train or a special train; but where a train was engaged in carrying passengers, running regularly every day upon an advertised time-card of the company,

equipped as all other passenger trains are, we are satisfied such a train was designed by the legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of
72 the law, it would have been an easy matter to have framed the law in such a way that no doubt could have existed in regard to the intention, and if such had been intended, language of a different character would no doubt have been used." To the same effect is *People ex rel. v. Louisville and Nashville Railroad Co.*, 120 Ill., 48.

In the case of *Stone v. Farmers' Loan and Trust Co.*, 116 U. S., 307, it was said: "There can be no doubt that each of the States through which the Mobile and Ohio railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennessee and Kentucky, to some point near the mouth of the Ohio river, where it would connect with another railroad to the lakes, and thus form a continuous line of interstate communication between the gulf of Mexico in the south and the Great Lakes in the north. It is equally certain that Congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation; but it is none the less true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything within the territorial limits of a State is, while there, subject to the constitutional authority of the State government. Clearly, under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and every thing within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of the road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, convenience or safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct
73 of others. This company is not relieved entirely from State regulation or State control in Mississippi simply because it has been incorporated by and is carrying on business in the other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress,—that is to say, using the language of this court in *Cardwell v. Bridge Co.*, 113 U. S., 210 (Bk. 28, L. ed.,

961), 'when the subjects on which it is exerted are national in their character and admit and require uniformity of regulations affecting all States alike.' Under this rule nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in the aid of interstate commerce. Legislation of this kind, to be unconstitutional, must be such as will necessarily amount to or operate as a regulation of business without the State as well as within."

Whilst the regulation and control of interstate commerce has been confided exclusively to Congress, and a State can interfere with transportation into or through its borders only to the extent absolutely necessary for its own protection, still, whatever tends to promote the health, safety or welfare of society would be a proper exercise of the police power. (*Toledo, Wabash and Western Railway Co. v. City of Jacksonville*, 67 Ill., 37.) Whatever is necessary to provide for the public welfare and the general security is within the police power of the government. Whether a particular regulation is a reasonable exercise of the police power is strictly a judicial question, but the law-making power is the sole judge of when the necessity exists, and when, if at all, it will exercise the right to enact such laws. As held in *Chicago and Alton Railroad Co. v. People, supra:* "The prompt and efficient transaction of all business in the courts held at the county-seat, * * * and various other matters pertaining to the welfare of the public, doubtless led to the enactment of the law." Such a statute for such a purpose would be a proper exercise of the police power of the State.

It is insisted that while, by virtue of its jurisdiction over
74 persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons, and for the protection of property there situated, yet, a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State unless placed there by congressional action. Whilst admitting this proposition to be true so far as it goes, yet we find no warrant for holding that the State is excluded from an exercise of a police power looking to the general welfare of the public, or that that subject-matter has been by the Constitution confided exclusively to the Congress of the United States. Although the regulation of interstate commerce is confided to Congress, the railroads within this State are domestic concerns, subject to the constitutional authority of the State government, which may regulate freights and fares for business done exclusively within the State, and make needful police regulations. As held in *Stone v. Farmers' Loan and Trust Co., supra*, "this company is not relieved entirely from State regulation or State control * * * because it has been incorporated by and is carrying on business in the other States through which its road runs." If this latter fact deprived the State of the exercise of the police power, the lives and property of its citizens

might be sacrificed in crowded thoroughfares and the State be powerless to protect them.

It is finally urged that as this train was demanded by and put on solely to meet the requirements of interstate travel and was intended for no local business, to compel it to stop at county-seats and do a local business would be a violation of the Federal Constitution, inasmuch as such action would interfere with and regulate interstate commerce. This railroad company, at the time of the filing of this petition, was running its trains over the tracks of what is known as the Terre Haute and Alton Railroad Company, which was incorporated under an act of the legislature of the State of Illinois in force January 28, 1851. At the same session of the legislature a supplemental act was also enacted in relation to the incorporation of the Terre Haute and Alton Railroad Company, which supplemental act went into effect February 13, 1851. An act was also passed by the legislature of the State of Illinois amending the act in relation to the incorporation of the Terre Haute and Alton Railroad
75 Company, which last act went into force February 28, 1854.

These acts were declared to be public acts. The authority for constructing, operating and maintaining the track over which trains of the appellant pass was all derived through and from the State of Illinois. At the time of the construction of the railroad over which the trains of the appellant company pass, the city of Hillsboro was one of the objective points through which it was to run, as designated in and by the authority granted to the company by the legislature of the State of Illinois. This company cannot, by its manner of doing business, escape State control and disregard a statute of the State which seeks to regulate and control domestic concerns within the limits of the State for the public welfare and general good. Appellant's "Knickerbocker special" is not national in its character, requiring uniformity of regulations affecting all States alike.

The Illinois act operates as a regulation of business within the State only. We hold this act is not an interference with interstate commerce, but a mere police regulation, applicable solely to the limits of the State of Illinois. It no more interferes with the expedition with which trains passing through the State carrying passengers from one State to another exclusively may reach their destination than does a regulation limiting the speed of trains running through a crowded thoroughfare, and like the latter regulation, is for the public welfare.

It was not error to sustain the demurrer to the answer, and the judgment of the circuit court of Montgomery county is affirmed.

Judgment affirmed.

76 And be it further remembered that afterwards, to wit, on the 24th day of October, A. D. 1898, an order was made in said cause in said court in the words and figures following, to wit:

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* THOMAS JETT, State's Attorney of Montgomery County, State of Illinois.

On this day come the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erronious, vicious, or defective, and that the record is no error, therefore it is considered by the court that the motions heretofore made to reverse the judgment and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed; and it is therefore ordered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the matter and things therein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the appellees recover of and from the said appellant costs by them in this behalf expended, and that they have execution therefor.

Endorsed on cover: File No. 17,281. Illinois supreme court. Term No., 696. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error, *vs.* The People of the State of Illinois *ex rel.* Thomas M. Jett. Filed January 27th, 1899.

Supreme Court of the United States

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. THOMAS M. JETT.

No. 696.

BRIEF OF PLAINTIFF IN ERROR.

I. *Statement of the Case.*

The state of Illinois, by Thomas M. Jett, state's attorney, filed the following petition for a mandamus in the circuit court of Montgomery county, Illinois. (See Record, p. 11.)

"The petitioner, Thomas M. Jett, state's attorney in and for said county, who sues for the people of the state of Illinois in this behalf, comes into court here and in the name and by the authority of the people of the state of Illinois, gives said court to understand and be informed that the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, an incorporated company, for several years last past, has been operating and is now operating a certain railroad, which is

located and extends from the city of St. Louis, Missouri, across the said county of Montgomery, and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, in the state of Indiana.

"The petitioner further gives said court to understand and be informed that said railroad has been located and operated across said county, and through the corporate limits of said city for a long space of time, to wit: forty years, and during all that time the company operating said railroad has kept and maintained a railroad station or depot within the corporate limits of said city, where its passenger trains have been accustomed to stop to take passengers on and to discharge them from its trains.

"The petitioner further gives said court to understand and be informed, that said city of Hillsboro, through which said railroad runs, as aforesaid, is now and for many years last past, to wit: seventy years, has been the county seat of said county of Montgomery, and that by the statute of the state in such case made and provided, it is made the duty of the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company to stop all regular passenger trains by it run over and upon said railroad, at said railroad station, on said railroad, situated within the corporate limits of said city, as aforesaid, a sufficient length of time to receive and let off passengers with safety; yet, notwithstanding its said duty in this behalf, the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company has for several weeks last past, knowingly, willfully and continuously run, and is now running, a regular passenger train or trains designated by said company the 'Knickerbocker special' twice each day, by and through said railroad station, situated within said city, as aforesaid, and through the corporate limits of said city at a great rate of speed, to wit: at the rate of fifteen miles per hour, without stopping said trains or either of them at said railway station, so that passengers can get on and off said trains, contrary to the provisions of the statute aforesaid, and against

the peace and dignity of the people of the state of Illinois.

"The petitioner further gives the court to understand and be informed that said railway company runs said 'Knickerbocker special' regular passenger train by and through said railway station without stopping and at the great rate of speed aforesaid from east to west at about the hour of 4 o'clock A. M. of each and every day, and runs said 'Knickerbocker special' regular passenger train by and through said railroad station without stopping and at the great rate of speed aforesaid from west to east about the hour of two o'clock P. M. of each and every day.

"The petitioner further gives said court to be informed and understand that said railway company is now running its said regular passenger trains as aforesaid, and he has every reason to believe and does believe, and so states the fact to be, that said railway company will continue to so run its trains and so continue to disregard its said duty unless it shall be compelled to stop said trains at said railroad station within the corporate limits of said city by the mandate of this court.

"Wherefore the petitioner prays a writ of mandamus directed to the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, commanding it forthwith to stop its said regular passenger trains, by it designated the 'Knickerbocker special,' as aforesaid, at said railroad station of said railway company located within the corporate limits of the city of Hillsboro, a sufficient length of time to receive and let off passengers with safety, as by the statute in such case made and provided said railway company is commanded to do, and that such further and other orders may be made and entered in the premises as justice may require."

The plaintiff in error filed the following answer. (See Record, p. 21.)

"Answering the petition filed herein by Thomas M. Jett, state's attorney in and for said county, who sues for the people of the state of Illinois, the defendant,

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, admits that it is an incorporated company, and avers that it was incorporated under the laws of the states of Ohio and Indiana, and admits that for several years last past it has been and now is operating a railroad extending from the city of St. Louis across said Montgomery county and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, Indiana, and through the state of Indiana and the state of Ohio to Cleveland, in the last named state, where it connects with the Lake Shore and Michigan Southern railroad, extending from the city of Cleveland to the city of Buffalo, New York, and there connecting with the New York Central and Hudson River Railroad extending from the city of Buffalo, in the state of New York, to the city of New York, in said state.

"Respondent further admits that said railway has been operating and now operates through the corporate limits of the city of Hillsboro; that it has kept and maintained a railroad station or depot within the corporate limits of said city of Hillsboro for a long time. It further avers that during all the time such railroad has been operated by this respondent it has furnished and now furnishes a sufficient number of regular passenger trains to accommodate all the local and through business along the line of its road, and especially all the local and through passenger business arriving at or destined for the city of Hillsboro; that its regular passenger trains engaged in carrying the local and through business have all stopped and do now stop at the station of the company in the city of Hillsboro. It further shows that no passenger trains have been taken off; that the same regular passenger trains which have run over said road prior to the putting on of the Knickerbocker special referred to in the petition filed against the defendant still run over said road and still stop at Hillsboro a sufficient length of time to enable all passengers to get on or off said trains with safety.

"Respondent further shows that such regular passen-

ger trains have been running for a long time over said road, and have been and now are ample and sufficient to accommodate the public and all the business along its line in the state of Illinois, and to furnish convenient and ready facilities for travel to the said people of Hillsboro and from the various points over said railway and to points beyond the lines of said railway, without delay, by the connections of said trains, and affording ample facilities for travel to all persons desiring to travel to and from Hillsboro.

"Your respondent further shows that the Knickerbocker special referred to in the petition filed against it is a special train especially devoted to carrying interstate transportation between the city of St. Louis, in the state of Missouri, to the city of New York, in the state of New York, both of which cities are without the limits of the state of Illinois; that prior to the putting on of such trains there was an urgent demand on the part of the through traveling public—that is, people desiring to go from said city of St. Louis to said city of New York and other interstate eastern points—for a through special fast train leaving St. Louis at noon and arriving in New York about six o'clock P. M. the day following its departure from St. Louis, and that this travel so desiring said train between the said cities has grown to such an extent that in order to satisfy and accommodate its requirements it became necessary for this defendant to put on this through fast train, called the Knickerbocker special, which leaves St. Louis daily at noon and connects with other through fast trains on the Lake Shore and Michigan Southern Railroad and New York Central and Hudson River Railroad and arrives at New York about six o'clock P. M. the day following its departure from St. Louis, thus making a fast through line from St. Louis to New York; and defendant avers that it was necessary to put on this train because the trains heretofore on said road and which still continue to run and stop at Hillsboro and other way stations could not and can not, by reason of such stops, make the time required by the through travel in order to make the said eastern connections,

and could not carry passengers from the city of St. Louis aforesaid to the said city of New York aforesaid within the time which the said demands of business and said passengers and interstate commerce required and does still require.

"Your respondent further shows that said train is not a regular passenger train for carrying passengers from one point to another point in the state of Illinois, but that such traffic is already amply and sufficiently provided for by the other trains passing over its road, and this Knickerbocker special train is run and used exclusively for interstate traffic from points wholly without the state of Illinois to points wholly without the state of Illinois, and is engaged exclusively in interstate commerce, and is not subject to regulation by the statute of the state of Illinois, providing that all trains shall stop at county seats; that to subject this train, engaged exclusively in interstate commerce, to statutory regulations of the various states through which it passes, requiring it to stop at county seats or way stations, would wholly destroy the usefulness of this train, would damage the passengers whose business necessities demand its being put on, would prevent them from making connections with other trains, and would impede and obstruct interstate commerce.

"Your respondent further shows that if said train is required to stop at the county seats in the state of Illinois and other states through which said through train passes and must run, that your respondent will be compelled to abandon said train; that it could not then be run as a fast through train solely for interstate transportation, which was and is the sole purpose and object of said train, and that said traveling public which has and does demand that said train shall leave St. Louis at noon and arrive in New York at about six o'clock P. M. the following day, will be greatly damaged and deprived of said train and its connections, and the stoppage of said train will cause great and serious detriment and damage to this defendant and the several persons who had or would pay their

fares for through transit from said city of St. Louis to said city of New York, and from said city of St. Louis to said cities of Indianapolis, Cleveland, Buffalo, and other cities east of Buffalo.

"Your respondent further shows that no tickets are sold for and no passengers received on said special Knickerbocker train, which is devoted exclusively to interstate commerce, from points in Illinois to points in Illinois, and that said Knickerbocker special train makes no stops in the state of Illinois for passengers—makes no stops in the said state of Illinois, except at railroad crossings, where there is no interlocking device, for fuel, water, or for necessary orders, and if it is required to make any other stops, and required to stop at Hillsboro and other county seats, it can not make the connections it now makes, nor the time which it now makes and which said public travel demands, and that it will have to be abandoned, to the great damage and irreparable damage and injury to this defendant and to all the through traveling public desiring to go from St. Louis, Missouri, to the city of New York.

"Your respondent admits that the city of Hillsboro is the county seat of Montgomery county, and shows that it has a population of only twenty-five hundred people, and that there are now and have been for some time and were at the time of the commencement of this suit four regular passenger trains each way every day passing through said city, which stopped at the station in said city a sufficient length of time to allow passengers to get on and off said trains, and that in addition to said regular passenger trains there are various local freight trains upon which passengers can ride to and from said city of Hillsboro, and that said regular passenger trains, together with said local freight trains, amply accommodate the travel to and from Hillsboro and afford every reasonable facility to travel to and from said city at reasonable hours, two of said passenger trains passing through said city going west to St. Louis in the morning at reasonable hours, and two of said regular passenger trains going west to St. Louis

passing through said city in the afternoon at reasonable hours, and two of said passenger trains going east from said city of St. Louis to Indianapolis and eastern points pass through said city at reasonable and timely hours in the morning, and two of said trains going east pass through Hillsboro at reasonable hours in the evening, and said local freight trains are run to accommodate the traveling public going to and from said city of Hillsboro.

Your respondent avers and further shows that the said supposed law and statute of the state of Illinois upon which this proceeding is based is null and void so far as it pertains to the regulation or stopping of this Knickerbocker special train, because the regulation of interstate commerce is exclusively within the power of congress under the constitution of the United States, and no state law can be passed to regulate or control trains engaged in interstate commerce and compel them to stop at county seats or way stations.

"Wherefore the defendant prays that said petition may be dismissed, and that this defendant, having fully answered, may have judgment for its costs and all proper relief."

The court sustained a demurrer to this amended answer. (See Record, p. 27.)

"To which ruling of the court, in sustaining said demurrer to said answer and holding said answer insufficient, the defendant at the time by its counsel excepted, and thereupon the court required said defendant to further answer said petition, which said defendant declined to do, but stood by its said amended answer as presenting a full answer and defense to the said petition herein filed, and thereupon the court ordered and adjudged that the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the defendant, be and hereby is commanded to forthwith stop its regular passenger train, designated by it "the Knickerbocker special," being the train leaving St. Louis, Missouri, about noon each day and going east

through Hillsboro about the hour of two o'clock P. M., at the railway station and depot of the defendant, located within the corporate limits of the said city of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety as the law requires." (Record, p. 28.)

The case was carried to the supreme court of Illinois. The assignment of errors in that court was as follows (Record, p. 31):

Assignment of Errors in the Supreme Court of Illinois.

"Comes now the appellant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and shows to the court that there is manifest error in this record in the following particulars, to wit:

"1. The court below erred in holding and finding that the respondent, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, could be compelled by the legislature of Illinois to stop at county seats in the state of Illinois trains engaged exclusively in interstate commerce, and in carrying through passengers from St. Louis, Missouri, to points east of the state of Illinois, and carrying no passengers between points within the state of Illinois, and in ordering the defendant to stop at Hillsboro, Illinois, its 'Knickerbocker special' trains, engaged exclusively in interstate commerce, and which carry no passengers between points within the state of Illinois, when other trains ample and sufficient to accommodate the business of Hillsboro and between points in Illinois and from points in Illinois to points without Illinois were provided by defendant, thereby holding, finding and decreeing that it was within the power of the state of Illinois to lay burdens and restraints upon interstate commerce and to regulate interstate commerce in matters not affecting the safety, convenience or welfare of the citizens of Illinois, in contravention of the constitution of the United States.

"2. The court erred in holding and finding that the legislature of Illinois, in the exercise of its police power, could lay burdens and restraints upon interstate commerce in particulars which do not affect the security, comfort, convenience, or welfare of the citizens of Illinois by compelling trains engaged exclusively in interstate commerce to stop at county seats in said state, when other trains ample and sufficient to accommodate all the travel between said county seats and other points within and without the state of Illinois were provided by said defendant, in contravention of the constitution of the United States.

"3. The court erred in sustaining a demurrer to the amended answer of the defendant.

"4. The court erred in rendering a judgment and awarding a peremptory writ of mandamus requiring the defendant to stop its regular through passenger train, designated by it as the "Knickerbocker special," being the train leaving St. Louis about noon each day and going through the town of Hillsboro about two o'clock P. M., at the railway station and depot of the defendant, located within the corporate limits of the town of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety, said train being engaged exclusively in interstate commerce and carrying no passengers between points in the state of Illinois or from points without the state of Illinois to points in the state of Illinois, or from points in the state of Illinois to points without the state of Illinois, thereby imposing restraints and burdens upon interstate commerce and assuming to regulate interstate commerce, contrary to the constitution of the United States.

"5. The court erred in rendering the judgment upon pleadings in favor of petitioner and against the respondent.

"6. The circuit court erred in not overruling the demurrer to the amended answer of respondent.

"7. The circuit court erred in awarding the writ of mandamus as prayed for in the petition of relator.

"8. The circuit court erred in awarding judgment against the respondent for the costs of this suit.

"9. The circuit court erred in holding the statute of the state of Illinois requiring all regular passenger trains to stop at county seats was valid, as the same, so far as it affects trains devoted solely to interstate commerce, is void and unconstitutional.

"10. The court erred in not carrying back the demurrer of petitioners to amended answer to the petition itself, and erred in not holding such petition insufficient.

"By reason whereof appellant prays that the said judgment may be reversed, etc."

The supreme court of Illinois affirmed the decision of the circuit court. The court in its opinion said (Record, page 37):

"Whatever is necessary to provide for the public welfare and the general security is within the police power of the government. Whether a particular regulation is a reasonable exercise of the police power is strictly a judicial question, but the law-making power is the sole judge of when the necessity exists, and when, if at all, it will exercise the right to enact such laws. * * * (Page 38.) This company can not, by its manner of doing business, escape state control and disregard a statute of the state which seeks to regulate and control domestic concerns within the limits of the state for the public welfare and general good. Appellant's 'Knickerbocker special' is not national in its character, requiring uniformity of regulations affecting all states alike. The Illinois act operates as a regulation of business within the state only. We hold this act is not an interference with interstate commerce, but a mere police regulation, applicable solely to the limits of the state of Illinois. It no more interferes with the expedition with which trains passing through the state carrying passengers from one state to another exclusively may reach their destination than does a regulation limiting the speed of trains running

through a crowded thoroughfare, and, like the latter regulation, is for the public welfare."

The assignment of errors in this court is as follows: (Record, p. 5.)

1st. The said supreme court of the state of Illinois erred in affirming the judgment of the circuit court of Montgomery county, Illinois.

2d. The said supreme court of the state of Illinois erred in holding that the statute of the state of Illinois requiring *all regular passenger trains* to stop a sufficient length of time at railway stations of county seats to receive and let off passengers with safety, was not in violation of the constitution of the United States.

3d. The said supreme court of the state of Illinois erred in holding that said statute was in force as applied to the special through interstate commerce train of the said plaintiff in error, known as the Knickerbocker special.

4th. The said supreme court of the state of Illinois erred in holding that the said statute of said state of Illinois requiring all regular passenger trains to stop a sufficient length of time at railway stations of county seats to receive and let off passengers with safety, as applied to through interstate special trains devoted exclusively to interstate commerce and running from the city of St. Louis, in the state of Missiouri, to the city of New York, in the state of New York, was not in violation of the constitution of the United States.

5th. The said supreme court of the state of Illinois erred in holding that such train was a train that could be regulated as to the manner and number of its stops by the state of Illinois, or any statute thereof.

And the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company prays that the said judg-

ment of the said circuit court of Montgomery county, awarding the peremptory writ of mandamus herein, and the judgment of the supreme court of the state of Illinois, affirming the judgment of the said circuit court of Montgomery county, Illinois, may be reversed, annulled, and held for naught, and that it may be restored to all things which it has lost by occasion of said judgment.

II. *The Question Presented.*

The contention of plaintiff in error is:

1. That This Act of the Legislature of Illinois, in so far as it is Applied to Trains Engaged Exclusively in Interstate Commerce, the Convenience of the People of the State of Illinois Being Amply Provided for by Other Trains, is a Regulation of Interstate Commerce, Pure and Simple, and Wholly Without and Beyond the Scope of State Legislation.

It will be seen that by the averments of the answer which are admitted by the demurrer, that the plaintiff in error ran four trains each way daily through the state of Illinois, stopping at the county seat of Hillsboro and other stations; that these trains were ample and sufficient for the accommodation and convenience of all persons desiring to travel to and from the city of Hillsboro to or from points in or beyond the state of Illinois; that the special Knickerbocker train which the court required to stop at Hillsboro is a special through train devoted exclusively to interstate commerce; that it was put on to meet the requirements of interstate travel between the cities of St. Louis and

New York solely to gain the time which was consumed by the other through trains in making the stops, and thus make connection with other fast trains of the Lake Shore and New York Central; that it made no stop in the state of Illinois, except for crossings and to take fuel and water and to receive orders; that it carried no passengers to or from points in the state of Illinois. If the train was required to make the stops it would not add to the convenience of the people of Hillsboro or other county seats, which was already amply provided for by other fast trains which did stop, and it would be unable to make its eastern connections, and to make the time required by the convenience of persons traveling between St. Louis and New York.

The statute of Illinois under which it sought to regulate trains engaged exclusively in interstate commerce and compel them to stop at county seats, when the public convenience is already amply provided for by other trains affording ample facilities for travelers to and from county seats in Illinois, is as follows (Section 25, as amended April 1, 1887, Hurd's Stat. 1899, p. 1060):

"Every railroad corporation shall cause its passenger trains to stop, upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided, *all regular passenger trains* shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety."

III. *Argument.*

The state may unquestionably, in the exercise of its powers of sovereignty, regulate and control the conduct of persons and corporations within its limits, but

all legislative acts must be subject to the paramount power of the constitution of the United States, and must not transcend the limits prescribed to state legislation by that instrument.

No question is raised as to the power of the state to legislate for the safety, welfare or convenience of all persons in its borders, but it can not, under the guise of legislating for the public welfare, pass laws which directly trench on the domain confided by the constitution exclusively to the congress of the United States.

The train which it is sought to regulate by an act of the legislature of Illinois is devoted exclusively to commerce among the states.

The averments of the answer, admitted by the demurrer, show that it was put on solely to meet the requirements of interstate travel between New York and St. Louis.

It was a fast through train between St. Louis and New York over the road of plaintiff in error and other roads. It did not stop in the state of Illinois, except for water or at crossings, or to receive orders. It carried no passengers from or to points in the state of Illinois. It was put on to save the time required to make stops, and thereby meet the necessities of through travel from St. Louis to New York. It left St. Louis at noon and arrived at New York about six o'clock the next day. If it was required to stop at all county seats through which it passed it could not make its connections, and would have to be taken off.

The averments of the answer admitted by the demurrer show that the convenience of the public was already amply provided for by four trains each way daily stopping at Hillsboro and other stations, and this special Knickerbocker was put on solely to meet the

necessities of commerce between St. Louis and New York, and to save the time required to make the stops made at county seats and other stations by the trains being then run.

The saving of the time taken by these stops between these cities was the only purpose of this train. If these stops could not be avoided, it could not make its connections with the L. S. & M. S. and New York Central, and would fail of its purpose and be discontinued. There were trains enough. They could not make the stops and the time too. It would not add to the convenience of Hillsboro or other county seats to compel this train to stop as the other trains did. If this train was compelled to stop as other trains it could not quicken the time, but it would impose a very great burden on interstate transportation.

There is no confusion in this case as to the limits or extent of the "police power." There is no question as to what is called "police power" in the case. There is no question even of the convenience of the public in Illinois. The averments of the answer show that the convenience of the people of Hillsboro and of Illinois are amply provided for by other trains.

While no question is here made as to the validity of this act, in so far as it regulates the running of trains engaged in transportation wholly within the state of Illinois, it can not be extended to regulate a train engaged exclusively in interstate transportation. Such regulation is wholly without and beyond the domain of state regulation.

It will be seen at once that if the legislature of Illinois has power to require trains engaged exclusively in interstate commerce to stop at all county seats, when the convenience of its citizens has been amply provided for by other trains, it has power to prescribe a regula-

tion of commerce among the states, which shall prevent the running of through fast trains, freight or passenger, devoted exclusively to interstate commerce, by compelling them to stop at county seats to receive and let off passengers, and receive and discharge way freight; it has power to regulate interstate commerce so that interstate trains, both freight and passenger, shall be prevented from making the connections and time they would otherwise make without a shadow of pretense that even the convenience of the public is served by such regulation.

Quick transportation is at an end, except in so far as the sovereign states through which it passes shall graciously permit.

2. "There can be no doubt but that exclusive power has been conferred upon congress in respect to the regulation of commerce among the several states. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it, for, as has been often said, "legislation may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the constitution." *Hall* v. *De Cuir*, 95 U. S. 465–468.

In *Wabash, St. Louis and Pacific* v. *Illinois*, 118 U. S. 556, 7 Supreme Court Rep. 4, the following language is quoted from the opinion of the court in *Hall* v. *De Cuir:*

"The line which separates the powers of the states from this exclusive power of congress is not always distinctly marked; and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary

rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that *state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of congress.* The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without, or goes out from within. *While it purports only to control the carrier, when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage.* * * * It was to meet just such a case that the commercial clause in the constitution was adopted. The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other, another. Commerce can not flourish in the midst of such embarrassments."

Now, in this case, while this act purports only to control the carrier while engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout all the

states through which this train runs. It compels it to stop its trains so that it can not make connections and can not make the time required by the necessities of interstate commerce, and destroys the purpose for which the train was put on. Its effect is to prevent the quick transportation required by the necessities of commerce between two of the most important cities in the Union.

3. *In this case the dividing line between the domain within which the state has power to regulate matters of internal police, and the domain of interstate commerce which has been exclusively confided by the constitution to Congress, is sharply defined.*

The act of the legislature of Illinois, as applied to an exclusively interstate commerce train, where the comfort and convenience of the people of Illinois is amply provided for by other trains, can not be sustained on the ground that it is within the power of the states to regulate matters of internal police within their limits.

It can not be contended that this act, as applied to this exclusively interstate train, affects the health, morals or safety of the public, or that it in the slightest degree tends to promote public peace, comfort or convenience.

The act of the legislature of Illinois in so far as it is applied to an exclusively interstate train, when the convenience of the people of the state is amply provided for by other trains, has no relation to the police power or the convenience of the people of Illinois.

It is an effort to apply an act, which would be valid as a regulation of trains beginning and ending in the state, to an exclusively interstate train. It is an inva-

sion of the domain of the national government by the state.

There is no question in the case as to the limit of the police power of the state.

4. It was said by the supreme court of Illinois in its opinion that appellant's "Knickerbocker special is not national in its character, requiring uniformity of regulations affecting all states alike."

If a fast through train between St. Louis and New York devoted exclusively to interstate commerce is not national in its character, then it would be difficult to conceive of a train that would be national in its character; and if the movement of such train can be regulated and the number of stops it shall make can be fixed by every state through which it passes, when the convenience of the people of such states is amply provided for by other trains, it is idle to speak of the exclusive power of congress to regulate interstate commerce.

5. *This case distinguished from L. S. & M. S. Ry. Co.* v. *The State of Ohio.*

This case was filed in this court on January 27, 1899. The case of *The L. S. & M. S. Ry. Co.* v. *The State of Ohio* was decided by this court February 20, 1899.

This case is distinguished from the Lake Shore case in the following particulars:

a. The statute of Ohio involved in that case provided:

"Section 3320. Each company shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village containing over 3,000 inhabitants for a time sufficient to receive or let off passengers," etc.

The court held, in the opinion delivered by Mr. Justice Harlan:

"The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if, in the contingency named in the statute, the required number of trains stop at each place containing 30 00 inhabitants long enough to receive and let off passengers."

The Illinois statute, on the other hand, requires *all trains* to stop at county seats long enough to receive and let off passengers, and the train to which this act is applied is exclusively an interstate train. This act does stand in the way of the railroad company running any trains without stopping at intermediate points.

6. *Where the line between the exclusive power of congress and the internal police power of the state is clearly defined, no question can arise as to the reasonableness of state enactment regulating commerce among the states.*

In the Lake Shore case it was said: "As the cases above cited show, and as appears from other cases, the reasonableness or unreasonableness of a state enactment is always an element in the general inquiry by the court whether such legislation encroaches upon national authority, or is to be deemed a legitimate exertion of the power of the state to protect the public interests or promote the public convenience."

While it is true the reasonableness or unreasonableness of a state enactment in the exercise of the police power will always be considered in determining whether it trenches upon the exclusive domain of national legislation, where the boundary line between

the power of the state and the power of the national congress is indistinct or not clearly defined, we respectfully submit that *where such boundary line is clear and sharply defined no question as to the reasonableness of a state enactment can arise.* The state can not invade the field in which the constitution has given to congress exclusive power, whether its regulations are reasonable or unreasonable.

In this case the line is so clearly drawn that there can be no confusion as to the boundary between the domain of exclusive congressional power and domain of state power.

It could not be contended that an act regulating rates within the state of Illinois could be extended to interstate commerce because such rates were reasonable. The line between the exclusive power of congress to regulate commerce among the states and the power of the states to regulate their internal affairs is drawn as distinctly in this case as it was in the *Wabash, St. Louis and Pacific R. Co.* v. *Illinois*, 118 U. S. 557.

It can not be claimed that the act of the legislature of Illinois, as applied to an exclusively interstate train, where the public convenience has been amply provided for by other trains, lies within the domain of state authority. It is wholly without the domain of state authority. It is a regulation of commerce among the states. In so far as it applies to exclusively interstate trains, the public convenience being already amply provided for by other trains, it is not an attempt to exercise the power of the state to provide for the safety, comfort or convenience of its people indirectly or incidentally affecting interstate transportation. Neither does the act seek to provide for the safety of interstate passengers within the state.

The application of this act to interstate transporta-

tion, as shown by the averments of the answer, has no relation to the safety, comfort or convenience of the people of Hillsboro or of the state of Illinois, but *directly and solely* affects interstate commerce and imposes burdens upon it, without regard to the safety, comfort or convenience of the people of the state. The state can pass no law directly regulating interstate commerce, whether such regulations are reasonable or unreasonable. It is not a question of their unreasonableness, but of the power of the state.

c. But further, this regulation is unreasonable. The answer in this case, the averments of which are admitted by the demurrer, shows clearly that the requirements of the Illinois act as applied to this case are wholly unreasonable; that the act as applied to exclusively interstate trains, when the convenience of the local community is amply provided for, does not add to the convenience of the local public, and greatly interrupts and burdens interstate travel between St. Louis and New York; that it has no appropriate relation to public convenience; that it goes beyond the necessities of the case, and in its application to exclusively interstate trains, when the public convenience of the people of Illinois is already amply provided for, is directed and only directed against interstate commerce.

d. The opinion in the Lake Shore case assumes four things:

"In what has been said we have assumed (1) that the statute is not in itself unreasonable; (2) that it has appropriate relation to public convenience; (3) that it does not go beyond the necessities of the case, and (4) it is not directed against interstate commerce."

Neither of these four assumptions apply to this case. As we have already shown, the statute in itself is

wholly unreasonable; in no respect promotes the convenience of the public; answers no public necessity, and imposes a great burden upon interstate travel between two of the most important cities in the Union. It is a needless intrusion upon the field committed by the constitution to congress.

As was said by Mr. Justice Miller in *Wabash, St. Louis & Pacific Ry. Co.* v. *Illinois*, 118 U. S. 557, 7 Sup. Ct. 4:

"It can not be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential, in modern times, to that freedom of commerce from the restraints which the states might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to congress the power to regulate commerce among the states and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the constitution. *Cook* v. *Pennsylvania*, 97 U. S. 574; *Brown* v. *Maryland*, 12 Wheat. 446. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states which was deemed essential to a more perfect union by the framers of the constitution, if, at every stage of the transportation of goods and chattels through the country, the state within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation or taxation, *or any other restrictive regulation* interfering with and seriously embarrassing this commerce."

e. In discussing *Hall* v. *De Cuir*, in *Lake Shore & Michigan Southern* v. *State of Ohio*, it is said (Harlan, Justice):

"The Louisiana statute, as interpreted by the court, embraced every passenger carrier coming into the state. The Ohio statute does not interfere at all with the man-

agement of the defendant's trains outside of the state, nor does it apply to all its trains coming into the state." (19 Supreme Court Rep. 473.)

We submit that the Illinois statute embraces every passenger carrier coming into the state, and that it interferes with the management of defendant's train outside of the state and applies to all its trains coming into the state; it prevents it from making its connections and from making the time required by the necessities of commerce, and destroys wholly the purpose of the train, and that, too, when the public convenience is amply provided for by other trains.

f. In the opinion in the *Lake Shore* v. *The State of Ohio*, referring to the judgment in the *Wabash, St. Louis and Pacific Ry. Co.* v. *Illinois*, the court said, distinguishing that case from the Wabash case:

"In the case before us there is no attempt upon the part of Ohio to regulate the movement of the defendant company's interstate trains throughout the whole route traversed by them. It applies only to the movement of trains while within the state, *and to the extent simply of requiring a given number*, if so many are daily run, to stop at certain places long enough to receive and let off passengers."

As we have already pointed out, the Illinois statute *applies to all trains*, and, according to the averments of the answer, admitted by the demurrer, it prevents them from making their connections and the required time between St. Louis and New York, without in any degree contributing to the convenience of the people of Illinois, which is already amply provided for by other trains.

The Illinois act does affect transportation through a series of states. It prevents this Knickerbocker train

from making its connections. It, in effect, prevents the running of a through fast train between St. Louis and New York.

In *Gladson* v. *State of Minnesota*, 166 U. S. 427, it is said by the court:

"But in the case at bar the train in question ran wholly within the state of Minnesota, and could have stopped at the county-seat of Pine county without deviating from its course; and the statute of Minnesota expressly provides that this act shall not apply to through railroad trains entering this state from any other state, or to transcontinental trains of any railroad."

The contention in the case at bar is wholly without the field of controversy in the Gladson case. In this case the train did not run wholly within the limits of the state of Illinois, but entered from another state and passed through the state to the Atlantic.

The legislature of Minnesota did not attempt to do what it is contended here that the legislature of Illinois has done; that is, to regulate trains devoted exclusively to interstate commerce passing through a series of states, where the convenience of the people of the state is amply provided for and where such regulation has no appropriate relation either to the convenience of the people of the state of Illinois or to the safety of travelers upon the train.

In *Illinois Central* v. *State of Illinois*, 163 U. S. 142 (41:107), it was held that the state can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic, citing the following cases:

Dubuque & S. C. R. Co. v. *Richmond*, 86 U. S. 19, Wallace, 584, 589 (22:173, 176); *Stone* v. *Farmers'*

Loan & T. Co. ("Railroad Commission Cases"), 116 U. S. 307, 334 (29:636, 645); *Smith* v. *Alabama*, 124 U. S. 465 (31:508; 1 Inters. Com. Rep. 804).

Neither does this case come within that class where laws having for their object the personal security of passengers while traveling within their respective limits, from one state to another, have been held valid. *New York, New Haven and Hartford R. R. Co.* v. *People of the State of New York*, 165 U. S. 628; 41 Supreme Court Rep., L. C. P. Co., 853.

In this case the statute of Illinois, as extended to this exclusively interstate commerce train, has not the slightest relation to the safety or convenience of passengers on such train, and, as we have above seen, the convenience of the people of Illinois is already amply provided for.

Respectfully submitted,

JOHN T. DYE,
For Plaintiff in Error.

GEORGE F. MCNULTY,
Of Counsel.

United States Supreme Court U. S.
FILED
FEB 9 1900
JAMES H. McKENNEY,
Clerk.

No. 198.
Brf. of Akin for D. C.

Supreme Court of the United States.

Filed Feb. 9, 1900.

CLEVELAND, CINCINNATTI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error.

vs.

No. 198.

PEOPLE OF THE STATE OF ILLINOIS, EX REL THOMAS M. JETT,
Defendant in Error.

ERROR TO SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

E. C. AKIN,
Attorney General, State of Illinois

C. A. HILL,
B. D. MONROE,
Assistants.

SPRINGFIELD, ILL.:
PHILLIPS BROS., STATE PRINTERS
1900.

Supreme Court of the United States.

CLEVELAND, CINCINNATTI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error.

vs.

PEOPLE OF THE STATE OF ILLINOIS, EX REL THOMES M. JETT,
Defendant in Error.

No. 696.

ERROR TO SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

E. C. AKIN,
Attorney General, State of Illinois

C. A. HILL,
B. D. MONROE,
Assistants.

SPRINGFIELD, ILL.:
PHILLIPS BROS., STATE PRINTERS
1900.

Supreme Court of the United States.

CLEVELAND, CINCINNATTI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error.

vs.

No. 696.

PEOPLE OF THE STATE OF ILLINOIS, EX REL THOMES M. JETT,
Defendant in Error.

ERROR TO SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

I.

This case involves the constitutionality, under the Federal Constitution, of an Act of the General Assembly of the State of Illinois, requiring all passenger trains to stop a sufficient length of time at railroad stations of county seats to receive and let off passengers with safety.

That act as it stood at the time of the filing of the petition for *mandamus* in this case, was as follows:—

> "Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, all reg-

ular passenger trains shall stop a sufficient length of time at the railroad stations of county seats to receive and let off passengers with safety."

That Act is Section 25 of an act entitled, "*An act in relation to fencing and operating railroads*," approved March 21, 1874, in force July 1, 1874, and was amended in 1899, (Hurd's Revised Statutes, 1899, Page 1333,) by adding thereto the following proviso:

> "*But provided further*, that where three regular passenger trains each way each day, are so stopped at the railroad stations of county seats on any division of any railroad in this State, it shall be lawful for not more than two through express or mail passenger trains, carrying mail or express and passengers, from one State to another, each way, each day, to pass through the railroad stations of the county seats on such divisions in this State, without stopping."

That proviso was not in force at the time of the filing of the petition in this case, nor at the time of the doing of the acts complained of in that petition, and has nothing to do with this case, except so far as it shows or tends to show that the power exercised in that section can be safely left to the People or to the Legislatures of the several States, and that they will, by amendment or otherwise, adapt such laws to the varying conditions and wants of the People of the State.

Counsel for plaintiff in error challenges the constitutionality of that Act as it stood before the amendment of 1899, upon the ground that it is in violation of the "Commerce Clause" of the Federal Constitution, giving Congress the power to regulate commerce among the several States. We insist that that Act is within the police or legislative power of the State, and a legitimate exercise of that power, and upon those contentions, the issue is joined, and the case must stand or fall.

We concede at the outset, that the power to regulate commerce with foreign nations, and among the several States, is vested exclusively in Congress, under the Federal Constitution, and that

that power can not be exercised by the Legislatures of the several States, but we insist that the Act here in question is not in conflict with that clause of the Federal Constitution, and that it does not even operate as a regulation of or a restraint upon such commerce. Counsel for plaintiff in error does not claim that it is a regulation of such commerce, but insists that it impedes or delays such commerce, by requiring passenger trains engaged exclusively in interstate commerce to stop at county seats, but to that we say that tuch incidental delay or impediment does not render the Act itself unconstitutional, and the fact that the "Knickerbocker Special" was put on and operated exclusively for the accommodation of interstate traffic between St. Louis and New York, does not make the law invalid, or change the legal aspect of the situation. All passenger trains in this country are engaged, to some extent at least, in interstate commerce or transportation, and in that respect is makes no difference whether such trains are fast or slow. Counsel for plaintiff in error practically admits that the Act in question is constitutional, except as against trains engaged exclusively in the transportation of passengers from one State to another. And the amended answer to the petition alleges that four regular passenger trains each way, each day, stop at the county seat of Montgomery County to receive and let off passengers, thus practically admitting that as to those four trains the Act is valid, and is being observed by the railroad company. If the Act is valid as to those trains, why not as to the "Knickerbocker Special?" They may not be engaged exclusively in the transportation of passengers from one State to another, but they must be, to some extent at least, engaged in interstate transportation; and if the Act is binding upon plaintiff in error, as to those trains, why should it not be as to the "Knickerbocker Special?" No distinction is perceived in law or principle. The Act in question must be binding as to all regular passenger trains or not as to any.

It is clear from both petition and answer that the so-called "Knickerbocker Special" was a regular passenger train within the meaning of the statute, and as such, subject to the provisions of the Act in question. Upon that point we quote from *Chicago & Alton R. R. Co. vs. People*, 105 Ill., 659, where it is said:

> "The train in question was equipped and operated in the same manner as any other passenger train on the road. It carried passengers and baggage as did other trains. It run upon the official time-table of the company as other trains did. Indeed, the only difference between this and the other passenger trains on the road was that the other two stopped at all the stations while this did not. On account of this difference, can the train, within the meaning of the statute, be regarded other than a regular passenger train? We think not The language of the act would not, perhaps, include a wild train, a freight train, an excursion train or a special train; but where a train was engaged in carrying passengers, running regularly every day upon an advertised time card of the company, equipped as all other passenger trains are, we are satisfied such a train was designed by the legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of the law, it would have been an easy matter to have framed the law in such a way that no doubt could have existed in regard to the intention, and if such had been intended, language of a different character would no doubt have been used.
>
> "But it is contended that if the act is broad enough to include the train in question, then its effect is a regulation of commerce between the States, and hence is inhibited by the constitution of the United States. The act does not undertake to regulate commerce between the States. It imposes no restriction upon the introduction or transportation of any article of commerce whatever. A State regulation which requires all passenger trains to stop at railroad crossings, at drawbridges, and requires the speed of trains to be reduced when running through incorporated towns and cities, has never, so far as we are informed, been regarded as a regulation of commerce, although the line of railroad thus regulated may pass through several States. And if the legislature has the right to require all trains to stop at a railroad crossing, and

to require the speed of all trains to be reduced when running through a city or incorporated town, on the same principle, and for a like reason, it has the power to require all regular trains to stop at the station in all county seats. A law of this character is but a proper exercise of the police power of the State, which has always been upheld and sustained by the courts.

"This railroad company accepted its charter upon the implied condition that its franchises would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, safety or welfare of society might require. Numerous cases might be cited in support of this principle. In *Galena and Chicago Union R. R. Co. vs. Loomis*, 13 Ill. 548, a law requiring a bell or whistle to be attached to each engine upon a railroad, was sustained, and the court held that 'the legislature had the power, by the enactment of general laws, from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety.' In *Ohio and Mississippi R. R. Co. vs. McClelland*, 25 Ill. 140, an act requiring all railroads then in operation to be fenced, and imposing a penalty for non-compliance, was sustained, and it was held that acts of incorporation are subordinate to general police regulations. In speaking of railroad corporations it is there said: 'They are subject to be controlled for the general good * * * * and for that purpose, the legislature may, beyond all doubt, regulate the speed of their trains, require them to place guards at bridges and other points of danger, and they may, as they have done, require the sound of a whistle or bell at road crossings, for the safety of passengers, together with their property.'

"If the legislature had the right, in the exercise of the police power of the State, to provide for the regulation of railroad corporations in the respects named in the cases cited, there can be no doubt in regard to the validity of the law in question. Did the act contribute to the comfort, safety or welfare of the public? If it did, and did not deprive the company of any essential right conferred by its charter, its passage was a proper exercise of the police power. * * * * In the enactment of the law requiring all regular passenger trains to stop at county seats, the legislature, no doubt, had in view the great benefit the public would derive in the in-

creased facilities for reaching the county seat, to aid in the dispatch of business in the courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors—indeed, in the prompt and efficient transaction of all business in the courts held at the county seat, and the facility for the examination of the records on the sale and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, and in its enactment we are fully satisfied that the legislature transcended none of its powers, nor did it violate any chartered rights of the railroad company."

In *Ohio & Mississippi R. R. Co. vs. McClelland*, 25 Ill. 140, the Supreme Court of Illinois held that in granting a charter to a private corporation, the State does not part with any of its power to enact proper police regulations operating upon such corporation the same as upon individual persons, and these bodies accept their charters upon the implied condition that they are to exercise their rights subject to the power of the State to regulate their action as it may individuals. And other cases of like import are to be found in the decisions of the Supreme Court of that State.

EVERY PERSON AND CORPORATION WITHIN THE TERRITORIAL LIMITS OF A STATE, IS, WHILE THERE SUBJECT TO THE CONSTITUTIONAL AUTHORITY OF THE STATE GOVERNMENT.

In support of that proposition we quote from *Mississippi vs. Farmers' Loan and Trust Co.*, 116 U. S. 307, where it is said:

"There can be no doubt that each of the States through which the Mobile and Ohio Railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennesee and Kentucky to some point near the mouth of the Ohio River, where it would connect with another railroad to the lakes, and form a continuous line of inter-state communication between the Gulf of Mexico in the south, and the Great Lakes in the north. It is equally certain that Congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation. But it is none the less

true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything within the territorial limits of a State is, while there, subject to the constitutional authority of the State government.

"Clearly under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi simply because it has been incorporated by, and is carrying on business in, the other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress, that is to say, using the language of this Court in *Cardwell* v. *Bridge Co.*, 113 U. S., 205, 210, 'when the subjects on which it is exerted are national in their character, and admit and require uniformity of regulations affecting alike all the States.' Under this rule nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in aid of interstate commerce. Legislation of this kind to be unconstitutional must be such as will necessarily amount to or operate as a regulation of business without the State as well as within."

In this connection we also call the attention of the Court to the opinion of the Supreme Court of Illinois in this case, (Rec. p. 35), where it is said:

> "In granting a charter to a private corporation the State does not part with its power to enact proper police regulations. Corporations accept their charters upon the implied condition that they are to exercise their rights subject to this power of the State. The legislature has the power, by the enactment of general laws from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety, health and welfare. (*Galena and Chicago Union R. R. Co. vs. Loomis*, 13 Ill. 548; *Ohio and Mississippi Railroad Co. vs. McClellan*, 25 *id.* 123; *Illinois Central Railroad Co. vs. People*, 143 *id.* 434.) This corporation operating a railroad across the State of Illinois is, for all purposes of local government, a domestic corporation, subject to the police control of the legislature of this State.
>
> "In *Chicago & Alton Railroad Co. vs. People, supra*, it was said (p. 659): 'The train in question was equipped and operated in the same manner as any other passenger train on the road. It carried passengers and baggage as did other trains. It ran upon the official time table of the company as other trains did. Indeed the only difference between this and the other passenger trains on the road was, that the other two stopped at all stations while this did not. On account of this difference, can the train, within the meaning of the statute, be regarded other than a regular passenger train? We think not. The language of the act would not, perhaps, include a wild train, a freight train, an excursion train or special train; but where a train was engaged in carrying passengers, running regularly every day upon an advertised time card of the company, equipped as all other passenger trains are, we are satisfied such a train was designed by the Legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of the law, it would have been an easy matter to have framed the law in such a way that no doubt could have existed in regard to the intention, and if such had

been intended language of a different character would no doubt have been used.' To the same effect is *People ex rel v. Louisville and Nashville Railroad Co.*, 120 Ill. 48.

"In the case of *Stone v. Farmers' Loan and Trust Co.*, 116 U. S., 307 it was said: 'There can be no doubt that each of the States through which the Mobile and Ohio railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennessee and Kentucky, to some point near the mouth of the Ohio river, where it would connect with another railroad to the lakes, and thus form a continuous line of interstate communication between the Gulf of Mexico in the south and the Great Lakes in the north. It is equally certain that Congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation; but it is none the less true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything with the territorial limits of a State, is, while there, subject to the constitutional authority of the State government. Clearly, under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of the road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, convenience or safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi simply because it has been incorporated by and is carrying on business in the

other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress,—that is to say, using the language of this Court in *Cardwell v. Bridge Co.*, 113 U. S. 210, (Bk. 28 L., ed., 961,) 'when the subjects on which it is exerted are national in their character and admit and require uniformity of regulations affecting all states alike.' Under this rule, nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in the aid of interstate commerce. Legislation of this kind, to be unconstitutional, must be such as will necessarily amount to or operate as a regulation of business without the State as well as within.

"Whilst the regulation and control of interstate commerce has been confined exclusively to Congress, and a State can interfere with transportation into or through its borders only to the extent absolutely necessary for its own protection, still, whatever tends to promote the health, safety or welfare of society would be a proper exercise of the police power. (*Toledo, Wabash and Western Railway Co. vs. City of Jacksonville*, 67 Ill. 37.) Whatever is necessary to provide for the public welfare and the general security is within the police power of the government. Whether a particular regulation is a reasonable exercise of the police power is strictly a judicial question, but the law-making power is the sole judge of when the necessity exists, and when, if at all, it will exercise the right to enact such laws. As held in *Chicago and Alton Railroad Co. vs. People, supra:* 'The prompt and efficient transaction of all business in the courts held at the county seat, * * * and various other matters pertaining to the welfare of the public, doubtless led to the enactment of the law.' Such a statute for such a purpose, would be a proper exercise of the police power of the State.

"It is insisted that while by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons, and for the protection of property there situated, yet, a subject matter which has been confided exclusively to Congress by the

Constitution is not within the jurisdiction of the police power of the State unless placed there by Congressional action. Whilst admitting this proposition to be true so far as it goes, yet we find no warrant for holding that the State is excluded from an exercise of a police power looking to the general welfare of the public, or that that subject-matter has been by the Constitution confided exclusively to the Congress of the United States. Although the regulation of the interstate commerce is confided to Congress, the railroads within this State are domestic concerns, subject to the constitutional authority of the State government, which may regulate freights and fares for business done exclusively within the State, and make needful police regulations. As held in *Stone vs. Farmers' Loan and Trust Co., supra*, 'this company is not relieved entirely from State regulation or State control, because it has been incorporated by and is carrying on business in the other States through which its road runs.' If this latter fact deprived the State of the exercise of the police power, the lives and property of its citizens might be sacrificed in crowded thoroughfares and the State be powerless to protect them.

"It is finally urged that as this train was demanded by and put on solely to meet the requirements of interstate travel and was intended for no local business, to compel it to stop at county seats and do a local business would be a violation of the Federal Constitution, inasmuch as such action would interfere with and regulate interstate commerce. This railroad company, at the time of the filing of this petition, was running its trains over the tracks of what is known as the Terre Haute & Alton Railroad Company, which was incorporated under an act of the legislature of the State of Illinois in force January 28, 1851. At the same session of the legislature a supplementary act was also enacted in relation to the incorporation of the Terre Haute & Alton Railroad Company, which supplemental act went into effect February 13, 1851. An act was also passed by the legislature of the State of Illinois amending the act in relation to the incorporation of the Terre Haute & Alton Railroad Company, which last act went into force February 28, 1854. These acts were declared to be public acts. The authority for constructing, operating and maintaining the track over which trains of the appellant pass was all derived through and from the State of Illinois. At the time of the construction of the railroad over which the trains of the appellant company pass, the city of Hillsboro

was one of the objective points through which it was to run, as designated in and by the authority granted to the company by the legislature of the State of Illinois. This company can not, by its manner of doing business, escape State control and disregard a statute of the State which seeks to regulate and control domestic concerns within the limits of the State for the public welfare and general good. Appellant's 'Knickerbocker Special' is not national in its character, requiring uniformity of regulations affecting all States alike.

"The Illinois act operates as a regulation of business within the State only. We hold this act is not an interference with interstate commerce, but a mere police regulation, applicable solely to the limits of the State of Illinois. It no more interferes with the expedition with which trains passing through the State carrying passengers from one State to another exclusively may reach their destination than does a regulation limiting the speed of trains running through a crowded thoroughfare; and like the latter regulation, is for the public welfare.

"It was not error to sustain the demurrer to the answer, and the judgment of the Circuit Court of Montgomery County is affirmed."

II.

A STATE LEGISLATURE HAS POWER TO REGULATE RAILROAD CORPORATIONS IN THE EXERCISE OF THEIR CORPORATE FRANCHISES, SO AS TO PROVIDE FOR THE PUBLIC SAFETY, WELFARE AND CONVENIENCE.

Galena & Chicago U. R. R. Co. v. *Loomis*, 13 Ill., 548.

Potter's Dwarris on Stat., 458.

Cooley's Const. Lim. (6 ed., p. 715).

Ohio & Mississippi R. R. Co. v. *McClelland*, 25 Ill., 140.

Lake View v. *Rose Hill Cemetery*, 70 Ill., 191.

C. & A. R. R. Co. v. *People*, 105 Ill., 657.

People v. *L. & N. R. R. Co.*, 120 Ill., 49.

Illinois Central R. R. Co. v. *People*, 143 Ill., 435.

Lake Shore & M. S. Ry. v. *Ohio*, 173 U. S., 285.

We shall not attempt here to cite the numerous authorities supporting the above proposition, or even to examine those we cite. That has been done by this Court so fully and authoritatively in *L. S. & M. S Ry. Co.* v. *Ohio, supra*, and the cases there cited are so familiar to the members of this Court, that we do not feel warranted in examining ground so fully and authoritatively covered by that decision. But what is there said, however, is so directly in point in this case, that we feel justified in quoting somewhat at length from the opinion in that case. It is there said, page 298:

> "It is not contended that the statute in question is repugnant to the Constitution of the United States, when applied to railroad trains carrying passengers between points within the State of Ohio, but the contention is that, to require railroad companies, even those organized under the laws of Ohio, to stop their trains, or any of them carrying interstate passengers, at a particular place or places in the State, for a reasonable time, so directly affects commerce among the States as to bring the statute, whether Congress has acted or not on the same subject, into conflict with the grant in the constitution of power to regulate such commerce. That such a regulation may be in itself reasonable and may promote the public convenience or subserve the general welfare, is, according to the argument made before us, of no consequence whatever; for it is said, a State regulation which, to any extent, or for a limited time only, interrupts the absolute, continuous freedom of interstate commerce, is forbidden by the constitution, although Congress has not legislated upon the particular subject covered by the State enactment. If these broad propositions are approved, it will be difficult to sustain the numerous judgments of this Court, upholding local regulations, which, in some degree, or only incidentally, affected commerce among the States, but which were adjudged not to be, in themselves, regulations of interstate commerce, but within the police powers of the States, and to be respected so long as Congress did not itself cover the subject by legislation." (Citing cases.)
>
> (Page 300).

"The statute in question is not directed against interstate commerce, nor is it, within the necessary meaning of the Constitution, a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce, and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits, until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations, and among the several States. The validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, can not be questioned.

"Consistently with these doctrines, it can not be adjudged that the Ohio Statute is unconstitutional. The power of a State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government, is to be determined by the same rules."

(p. 302), "The plaintiff in error accepted its charter, subject, necessarily, to the condition that it would conform to such reasonable regulations as the State might, from time to time, establish, that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us, was, in itself, a regulation of interstate commerce. It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains, but it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State, who wish to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the State without stopping. Any other view of the relations between

the State and the corporation created by it, would mean that the directors of a corporation could manage its affairs solely with reference to the interests of stockholders, and without taking into consideration the interests of the general public. It would mean not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line, or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that, beyond the power of the State to prevent it, the defendant railway company could run all its trains through the State without stopping at any city within its limits, however numerous its population, and could prevent the people along its road within the State, who desired to go beyond its limits, from using its interstate trains at all, or only at such points as the company chose to designate. A principle that, in its application, admits of such results can not be sanctioned."

We shall not attempt to review or criticise the able and exhaustive opinions, either majority or minority, in that case, or even attempt to examine or distinguish the numerous opinions of this Court there cited. It is sufficient and perhaps proper to say, that these opinions aptly illustrate the conflict between States' Rights and National Power that has been going on in this country almost from the foundation of the Republic, and that while we do not feel warranted in passing upon the merits of that controversy in any broader way, we do think that the several State governments are vested with all power not expressly granted to the general government, or necessarily implied by such grants, and that in case of serious doubt, that doubt should be resolved in favor of the legislatures of the several States.

In this connection, we call the attention of the Court to the fact that the statute here in question is not a special statute, enacted for the prevention or obstruction of interstate commerce, but that it is only one of a series of sections embodied in an Act

entitled, "An Act in relation to fencing and operating railroads," which has been in operation in the State of Illinois for over twenty-five years. (See Hurd's Revised Statutes, 1899, Chap. 114, pages 1328 to 1335 inclusive.) Without examining the provisions of that Act in detail, it is sufficient here to say that it provides for sign boards and flagmen at railroad crossings; for sounding bell or whistle at highway crossings; for a full stop before reaching a draw bridge; for brakemen on freight and passenger trains; prohibits baggage smashing, obstruction of streets and highways, and contains numerous other salutary provisions regulating the use and operation of railroads in this State.

Of course we understand, that the only section here in controversy, is the one requiring all regular passenger trains to stop at county seats a sufficient length of time to let passengers on and off with safety. But in passing upon the validity of that section, the scope and operation of the Act as a whole should we think be considered, in order to determine not only the meaning and effect of that particular section, but the intention of the Legislature in the passage of the Act. And when that is done, we are persuaded that nothing will be found in the Act to indicate any intention on the part of the Legislature to obstruct, or in any way interfere, with interstate commerce. It can not be safely said that passenger trains engaged in interstate commerce ought not, on general princples, to be subjected to the police or governmental power of the State, for the safety and welfare of their passengers, as well as of the public, as much as those not exclusively engaged in such interstate traffic. It causes some little delay, usually not to exceed five minutes, to stop at a draw-bridge or a railroad crossing, as well as at a county seat, but who will say that such stops are not necessary, and who should determine the necessity except the people of the State in which the railroad is chartered and operated. Every one would shudder with horror at

the thought that a passenger train should be permitted, or rather that it should not be prohibited, from plunging across a railroad crossing or a draw-bridge without stopping to see if the way is open and free from danger. And that, of course, causes some delay. And what would be thought of a person who insisted that certain trains not engaged exclusively in interstate commerce were properly required to make such stops, but that those engaged exclusively in interstate commerce were not and should not be so prohibited. No distinction in principle can be made between such a case and the present one. They would both rest at least upon the power of the legislature to enact such a law. It is well settled law that the police power of a State extends not only to the public health and safety but to the convenience and welfare of the public, as well. And if a State Legislature has the power to say that all passenger trains before crossing a draw-bridge or a railroad shall come to a full stop, it has equal power to say, in furtherance of the convenience and welfare of the public, that all trains shall stop at county seats, whether they are engaged in interstate commerce or not. It has the same power to say that such trains shall move slowly through crowded thoroughfares, and yet such regulations must, to some extent, delay the speed of the train, and if that train is engaged exclusively in interstate commerce, prevent it from making connections with other trains and other roads with which it was intended to connect. In fact, the greater the speed of the train, the greater the necessity for such statutory regulations. Such delays, however, are merely incidental to the operation of all trains, whether engaged in interstate commerce or not. The statutes providing for such regulations are not enacted for the purpose of causing delays, nor for the purpose of interfering in any way with interstate commerce, but for the sole purpose of safeguarding passengers and the public. We have said in another connection that all railroad

trains in this country are engaged, more or less, in interstate commerce, and that is true. Take the four trains which plaintiff in error says pass each way through Hillsboro each day, from St. Louis to Indianapolis; and which are not engaged exclusively in interstate commerce, but carry passengers from St. Louis to Indianapolis, or from one State to another, and there those passengers take other trains in the direction of their journey's end in some other State; and in that way they are nearly all going from one State to another. So it is with others who leave St. Louis or travel toward St. Louis via the Big Four Railroad on those trains, and make connection with other trains or other roads in the State of Illinois. They, too, are going from one State to another, but by a slower train, and they too, are, for the time being, subjects of interstate commerce, yet they must, according to the argument of counsel for plaintiff in error, suffer the delay at county seats, as well as at railroad crossings and draw bridges, as required by the statute. Where, then, is the distinction between trains engaged exclusively in interstate commerce, and those that are not? There is none. It all depends upon the power and enactment of the legislature, and where it has spoken, the law is as obligatory upon trains engaged exclusively in interstate commerce, as upon those that are not. We know that laws and constitutions are constantly changing, and that, in this country, the law is, what this Court finally determines it to be, and we are glad to know that this case is in the hands of Judges of long and varied experience, and learned in the law, who will give the case and the principles involved the most thorough and deliberate consideration before determining it. And we have confidence to believe that when that is done, the power of regulating and controlling the operation of railroad trains will be found to be in the legislature of the State where the railroad is operated.

In *Nicol vs. Aimes*, 173 U. S., 509, it was held that:

> "When an act of Congress is claimed to be unconstitutional, the presumption is in favor of validity, and it is only when the question is free from any reasonable doubt that this Court should hold an act of the law-making power of the government to be in violation of that fundamental instrument upon which all the powers of the Government rest."

And the same rule should, of course, apply to an Act of the legislature of a State; and the books are full of cases in which that rule has been applied to an Act of a State Legislature.

That rule is so well settled as to be beyond question, and we invoke its application to this case; the conflicting views of the members of this Court, evidenced by the majority and minority opinions in *L. S. & M. S. Ry. Co. vs. Ohio, supra*, may, perhaps, be instanced to show that the power of the Legislature of the State of Illinois, to pass the Act here in question, is not free from reasonable doubt, and if that be so, then under the rule stated, it should be sustained as a valid enactment.

There is another feature of this case to which we ask the attention of the Court: The demurrer to the amended answer, (Rec. p. 25-26) questions the sufficiency of that answer, on several grounds, the third and fourth being as follows:

> 3rd. "Your petitioner further demurs to that part of respondent's answer, in which it is said, that such train is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, and that such traffic is already sufficiently and amply provided for by trains passing over its road, in this, that this is a mere conclusion, reached by the respondent.
>
> 4th. "Also, that such answer of the respondent is argumentative in this, that the facts which the respondent undertakes to set up in its answer, by way of its defense, are not set forth and averred in an affirmative manner, but are argumentative and mere conclusions."

An examination of the answer (Rec. pp. 22, 23, 24) will show that these points of demurrer are well taken. A plea or answer

should, of course, state facts and not conclusions of law or fact. The answer in question does not conform to that rule. It states certain facts, but it is full of conclusions of law and fact. Thus, (Rec. p. 22).

> "It further avers, that during all the time such railroad has been operated by this respondent, it has furnished, and now furnishes, a sufficient number of regular passenger trains to accommodate all the local and through business along the line of its road, and especially all the local and through passenger business arriving at or destined for the City of Hillsboro."

And again page 22.

> "Respondent further shows, that such regular passenger trains had been running for a long time over said road, and have been, and now are, ample and sufficient to accommodate the public, and all the business along its line in the State of Illinois, and to furnish convenient and ready facilities for travel to the said people of Hillsboro, and from the various points over said railway, and to points beyond the lines of said railway, without delay, by the connections of said trains, and affording ample facilities for travel to all persons desiring to travel to and from Hillsboro."

These, and other averments to that effect, are, we submit, mere conclusions of the pleader, and, in those respects, the points of demurrer quoted are well taken. Those averments are incapable of proof, except by the opinions of witnesses, concerning which such opinions would inevitably differ, and upon which the validity of the Act in question in no wise depends. That Act requires that all regular passenger trains shall stop at county seats a sufficient length of time to let passengers on and off with safety, and not that some passenger trains shall stop. And the amended answer was, therefore, argumentative and evasive, as pointed out in the demurrer.

If the Act in question is valid and constitutional, it affects all regular passenger trains alike, and respondent can not, or should not, escape on any of the grounds stated in the answer.

We also call the attention of the Court to the Act of the General Assembly of the State of Illinois, incorporating the Terre Haute and Alton R. R. Co., referred to in the opinion of the Supreme Court of the State of Illinois, (Rec. p. 38) over the tracks of which the trains of the plaintiff in error are operated. Section 1 of that Act, (Public and Private Laws, 1851, p. 29) provides—

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Robert Smith, Cyrus Edwards, Simeon Ryder, Samuel Wade, Thomas G. Hawley, Robert Ferguson Philander C. Huggins, John S. Hayward, Joseph T. Eccles, George Burnap, Thomas Phillips, Thomas A. Gray, William Wood, William F. Thornton, Joseph L. Dexter, John D. Bruster, Joseph Oliver, John Ward, John Small, Byrd Monroe, Hezekiah J. Ashmore, John M. Easton, James Cunningham, Ebenezer Noyes, Isaac Sanford, Richard B. Southerland, Allanson Baldwin, George Redman, and all other persons who have or may become stockholders in the capital stock of the corporation hereinafter mentioned, in conformity to the provisions of the 'An Act to provide for a general system of railroad incorporations', enacted by the General Assembly of the State of Illinois, and approved November 5, 1849, and to the provisions of that act, they and their associates, successors and asssigns, shall be and are hereby created a body politic and corporate, by the name of 'The Terre Haute and Alton Railroad Company,' and by that name they and their successors and assigns shall and may continue for the term of fifty years from and after the passage of this Act, and are hereby authorized and empowered to construct and complete, and during its existence to maintain and continue, a railroad, with a single or double track, and with all such appendages as may be necessary for the convenient use of the same, commencing at a point on the state line between the states of Indiana and Illinois, in a direction for Terre Haute, Indiana; thence to Paris, in Edgar county; thence to Charleston in Coles county; thence to Shelbyville in Shelby county; thence to Hillsboro, in Montgomery county; thence to Bunker Hill, in Macoupin county; and thence to Alton, on the Mississippi river, in the State of Illinois."

Sec. 10 of that Act is as follows:

> "The said corporation is hereby authorized, by and with the consent of the State of Indiana, to extend said railroad to Terre Haute, Indiana, or to form a connection with any company that may be formed for that purpose by the authority of the State of Indiana."

Thus, clearly showing that it was the intention of the legislature to give the city of Hillsboro, and the other objective points named in that Act, the benefit of interstate, as well as of State commerce, and we submit, that plaintiff in error, in the management and operation of its trains, is bound by that Act, and can not legally, discriminate against the City of Hillsboro, in the transportation of interstate commerce, in which it is, or may be engaged.

Respectfully submitted,

E. C. AKIN,
Attorney General, State of Illinois.

C. A. HILL,
B. D. MONROE,
Assistants.

177 514
177 586

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *v.* ILLINOIS.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 198. Argued and submitted March 16, 1900. — Decided April 30, 1900.

A state statute required all regular passenger trains to stop a sufficient length of time at county seats to receive and let off passengers with safety. It appearing that the defendant company furnished four regular passenger trains per day each way, which were sufficient to accommodate all the local and through business, and that all such trains stopped at county seats, the act was held to be invalid as applied to an express train intended only for through passengers from St. Louis to New York.

While railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, they have the legal right, after all these local conditions have been met, to adopt special provisions for through traffic, and legislative interference therewith is an infringement upon the clause of the Constitution which requires that commerce between the States shall be free and unobstructed.

Statement of the Case.

THIS was a petition for a writ of mandamus filed in the Circuit Court for the county of Montgomery, by the State's attorney for that county, to compel the defendant railway company, which for several years past has operated, and is now operating, a railroad from St. Louis, Missouri, through the county of Montgomery and the city of Hillsboro, the county seat of such county, to Indianapolis, Indiana, to stop a regular passenger train, designated as the "Knickerbocker Special," at the city of Hillsboro, a sufficient length of time to receive and let off passengers with safety.

The petition was based upon section 26, of an act of the General Assembly of Illinois, entitled "An act in relation to fences and operating railroads," approved March 31, 1874, which reads as follows:

"Every railroad corporation shall cause its passenger trains to stop upon its (their) arrival at each station advertised by such corporation as a place of receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided, all regular passenger trains shall stop a sufficient length of time at the railroad stations of county seats to receive and let off passengers with safety."

The answer of the railroad company averred that the company furnished four regular passenger trains each way a day, passing through and stopping at Hillsboro, and that they amply accommodated the travel, and afforded every reasonable facility to such city; that the Knickerbocker Special was a train especially devoted to carrying interstate transportation between the city of St. Louis and the city of New York; that the travel between these cities had grown to such an extent that it had become necessary to put on a through fast train, which connected with other similar trains on the Lake Shore and New York Central roads, and that it was necessary to put on this train because the trains theretofore run, none of which had ever been taken off, could not, by reason of stopping at Hillsboro and other similar stations, make the time necessary for eastern connections, or carry passengers from St. Louis to New York within the time which the demands of business and inter-

state traffic required; that the Knickerbocker Special is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, such traffic being amply provided for by other trains, and that the Knickerbocker Special is used exclusively for interstate traffic from and to points without the State of Illinois; that it is not subject to regulation by the statute of Illinois providing that all trains shall stop at all county seats, and that to subject it to the statutes of the various States through which it passes, requiring it to stop at county seats, would wholly destroy the usefulness of the train, and would impede and obstruct interstate commerce, and that obedience to the statute in question would require it to abandon the train.

A demurrer to this answer was sustained, and the defendant electing to stand upon it as a full defence to the petition, a final judgment was rendered and a peremptory writ of mandamus awarded against the defendant. On appeal to the Supreme Court of the State this judgment was affirmed. Whereupon the railway company sued out a writ of error from this court.

Mr. John T. Dye for plaintiff in error. *Mr. George F. McNulty* was on his brief.

Mr. E. C. Akin, *Mr. C. A. Hill* and *Mr. B. D. Monroe* for defendant in error, submitted on their brief.

Mr. Justice Brown delivered the opinion of the court.

Few classes of cases have become more common of recent years than those wherein the police power of the State over the vehicles of interstate commerce has been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employés, persons crossing railway tracks, and adjacent property owners, as well as other regulations intended for the public good.

We have recently applied this doctrine to state laws requiring locomotive engineers to be examined and licensed by the state authorities, *Smith* v. *Alabama*, 124 U. S. 465; requiring such engineers to be examined from time to time with respect to their ability to distinguish colors, *Nashville &c. Railway* v. *Alabama*, 128 U. S. 96; requiring telegraph companies to receive dispatches and to transmit and deliver them with due diligence, as applied to messages from outside the State, *Western Union Tel. Co.* v. *James*, 162 U. S. 650; forbidding the running of freight trains on Sunday, *Hennington* v. *Georgia*, 163 U. S. 299; requiring railway companies to fix their rates annually for the transportation of passengers and freight, and also requiring them to post a printed copy of such rates at all their stations, *Railway Company* v. *Fuller*, 17 Wall. 560; forbidding the consolidation of parallel or competing lines of railway, *Louisville & Nashville Railroad* v. *Kentucky*, 161 U. S. 677; regulating the heating of passenger cars, and directing guards and guard posts to be placed on railroad bridges and trestles and the approaches thereto, *N. Y., N. H. &c. Railroad Co.* v. *New York*, 165 U. S. 628; providing that no contract shall exempt any railroad corporation from the liability of a common carrier or a carrier of passengers, which would have existed if no contract had been made, *Chicago, Milwaukee &c. Railway* v. *Solan*, 169 U. S. 133; and declaring that when a common carrier accepts for transportation anything directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier be released or exempted from such liability by contract in writing, signed by the owner or his agent, *Richmond & Allegheny Railroad* v. *Patterson Tobacco Co.*, 169 U. S. 311. In none of these cases was it thought that the regulations were unreasonable or operated in any just sense as a restriction upon interstate commerce.

But for the reason that these laws were considered unreasonable and to unnecessarily hamper commerce between the States, we have felt ourselves constrained in a large number of cases to express our disapproval of such as provided for taxing di-

rectly or indirectly the carrying on or the profits of interstate commerce. We have also held to be invalid a statute of Louisiana requiring those engaged in interstate commerce to give all persons upon public conveyances equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color, *Hall* v. *De Cuir*, 95 U. S. 485; another regulating the charges of railway companies for passengers or freight between places in different States, *Wabash St. Louis &c. Railway* v. *Illinois*, 118 U. S. 557; another requiring telegraph companies to deliver dispatches by messenger to the persons to whom the same are addressed, so far as they attempted to regulate the delivery of such dispatches at places situated in another State, *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347; and still another forbidding common carriers from bringing intoxicating liquors into the State without being furnished with a certificate that the consignee was authorized to sell intoxicating liquors in the county, *Bowman* v. *Chicago & Northwestern Railway*, 125 U. S. 465.

Several acts *in pari materia* with the one under consideration have been before this court, and have been approved or disapproved as they have seemed reasonable or unreasonable, or bore more or less heavily upon the power of railways to regulate their trains in the respective and sometimes conflicting interests of local and through traffic. In the earliest of these cases, *Illinois Central Railroad* v. *Illinois*, 163 U. S. 142, the very statute of Illinois under consideration in this case, as construed and applied by the Supreme Court of that State, was held to be an unreasonable restriction upon interstate traffic, in requiring a fast mail train from Chicago to places south of the Ohio River, over an interstate highway established by authority of Congress, to delay the transportation of its interstate passengers and United States mail, by turning aside from its direct route and running to a station (Cairo) three and one half miles away from a point on that route, and back again to the same point, before proceeding on its way; and to do this for the purpose of discharging and receiving passengers at that station, for whom the railroad company furnished other and ample accommodation. Said Mr. Justice Gray: "The State may doubt-

less compel the railroad company to perform the duty imposed by its charter of carrying passengers and goods between its termini within the State. But so long, at least, as that duty is adequately performed by the company, the State cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States."

Upon the contrary, in *Gladson* v. *Minnesota*, 166 U. S. 427, a state statute requiring every railroad to stop all its regular passenger trains running wholly within the State at its stations in all county seats long enough to take on and discharge passengers with safety, was held to be a reasonable exercise of the police power of the State, even as applied to a train connecting with a train of the same company running into another State, and carrying some interstate passengers as well as the mail. The case was distinguished from that of the *Illinois Central Railroad* v. *Illinois*, in the fact that the train in question ran wholly within the State of Minnesota, and could have stopped at the county seats without deviating from its course; and that the statute of Minnesota expressly provided that the act should not apply to through trains entering the State from any other State, or to transcontinental trains of any railroad. Speaking of police regulations for the government of railroads while operating roads within the jurisdiction of the State, it was said that "they are not in themselves regulations of interstate commerce; and it is only when they operate as such in the circumstances of their application and conflict with the express or presumed will of Congress exerted upon the same subject, that they can be required to give way to the paramount authority of the Constitution of the United States." The railroad in this case was treated as a purely domestic corporation, notwithstanding it connected, as most railroads do, with railroads in other States.

In the most recent case upon this subject, *Lake Shore & Michigan Southern Railway* v. *Ohio*, 173 U. S. 285, a statute of Ohio providing that every railroad company should cause three of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village contain-

ing over three thousand inhabitants, for a time sufficient to receive and let off passengers, was held to be, in the absence of legislation by Congress upon the subject, consistent with the Constitution of the United States, when applied to trains engaged in interstate commerce through the State of Ohio. In delivering the opinion of the court, Mr. Justice Harlan observed: "The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if in the contingency named in the statute the required number of trains stop at each place containing three thousand inhabitants long enough to receive and let off passengers. It seems from the evidence that the average time required to stop a train and receive and let off passengers is three minutes. Certainly, the State of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers traveling through the State between points outside of its territory. . . . It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and as far as practicable make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who wished to pass through the State without stopping." This case is readily distinguishable from the one under consideration in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing three thousand inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed.

Opinion of the Court.

The question broadly presented in this case is this: Whether a state statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question?

The demurrer to the answer admits that the railway company furnishes a sufficient number of regular passenger trains, (four each way a day,) to accommodate all the local and through business along the line of the road, and that all of such trains stop at Hillsboro; that none of such trains have been taken off, and all of which ran prior to the putting on of the Knickerbocker Special still run and still stop at Hillsboro, and that they furnish ample and sufficient accommodation to all persons desiring to travel to and from that place; that the Knickerbocker Special was put on in response to an urgent demand on the part of the through travelling public from St. Louis to New York and that it was necessary, as the passenger trains theretofore used could not, by reason of stopping at way stations, make the time required for eastern connections, and if compelled to stop at county seats the company will be compelled to abandon the train to the great damage of the travelling public and to the railway company.

It is evident that the power attempted to be exercised under this statute would operate as a serious restriction upon the speed of trains engaged in interstate traffic, and might, in some cases, render it impossible for trunk lines running through the State of Illinois to compete with other lines running through States in which no such restrictions were applied. If such passenger trains may be compelled to stop at county seats it is difficult to see why the legislature may not compel them to stop at every station—a requirement which would be practically destructive of through travel, where there were competing lines unhampered by such regulations. While, as we held in the *Lake Shore case*, railways are bound to provide primarily and ade-

quately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise but who may have contributed largely to the construction of the road, they are bound to do no more than this, and may then provide special facilities for the accommodation of through traffic. We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths or the excellence of their tables would insure them such share, if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it.

With no disposition whatever to vary or qualify the cases above cited, neither the conclusions of the court nor the tenor of the opinions are opposed to the principle we hold to in this case, that, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the States shall be free and unobstructed.

While the statute in question is operative only in the State of Illinois, it is obnoxious to the criticism made of the Louisiana statute in *Hall* v. *DeCuir*, 95 U. S. 485, that "while it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct, to some extent, in the management of his business throughout his entire voyage. . . . If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own

passengers and regulate the transportation of its own freight regardless of the interests of others." The distinction between this statute and regulations requiring passenger trains to stop at railroad crossings and drawbridges, and to reduce the speed of trains when running through crowded thoroughfares; requiring its tracks to be fenced, and a bell and whistle to be attached to each engine, signal lights to be carried at night, and tariff and time tables to be posted at proper places, and other similar requirements contributing to the safety, comfort and convenience of their patrons, is too obvious to require discussion. *Railroad Commission Cases*, 116 U. S. 307, 334.

We are of opinion that the act in question is a direct burden upon interstate commerce, and the judgment of the Supreme Court of the State of Illinois must therefore be reversed, and the case remanded to that court for further proceedings not inconsistent with this opinion.

MR. JUSTICE BREWER and MR. JUSTICE SHIRAS concurring:

We concur in this judgment on the proposition that the act of the legislature of Illinois whether reasonable or unreasonable, wise or foolish, is, as applied to the facts of this case, an attempt by the State to directly regulate interstate commerce, and as such attempt, is beyond the power of the State.